SASKATCHEWAN

REPORT

OF THE

OMBUDSMAN

PERIOD 1 JANUARY 1990 — 31 DECEMBER 1990

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EIGHTEENTH ANNUAL REPORT

"So long as we are mindful that in our endeavours to seek redress for grievances, we are there neither to witch-hunt nor to white-wash;

So long as we remember that we can help to make good government better but cannot make bad government good;

So long as we believe in ourselves and at the same time remember that we are also fallible human beings;

So long as we retain our political neutrality and act impartially, independently and fearlessly but without rancour;

So long as we take care to explain governmental decisions where necessary and at the same time not overlook to give reasons for our decisions and recommendations;

So long as we ourselves remain human and accessible in an age of rapid technological advance where the society itself is becoming increasingly impersonal;

and, so long as we, to use the words of Socrates — hear cautiously, answer wisely, consider solidly and decide impartially . . .

then in my humble view the Ombudsman image will continue to grow and shine in the international sphere not only in 90's but also for years ahead."

By: Justice Sir Moti Tikaram,
Ombudsman of Fiji, 1984

OMBUDSMAN
SASKATCHEWAN
2310 Scarth Street Regina, Canada S4P 3V7 (306) 565-6211

The Honourable The Speaker
of the Legislature
Province of Saskatchewan
Legislative Buildings
REGINA, Saskatchewan
S4S 0B3

Dear Mr. Speaker:

It is my duty and privilege to submit to you and to the Legislature, the eighteenth Annual Report of the Saskatchewan Ombudsman, submitted in accordance with the provisions of subsection (1) of section 30 of **The Ombudsman Act.**

Yours sincerely,

Gerald P. McLellan
OMBUDSMAN

PART I

OVERVIEW

PART I

OVERVIEW

While 1990 did not involve any large scale investigations, such as the Bosco Homes and Principal Group cases, mentioned last year, it was yet another term of solid work with 1,444 complaints closed. Some resolution or remedy was obtained for our clients in 23.5% (338) of these finalized cases, 10.5% (152) were found not substantiated and another 60% (880) were discontinued following initial inquiry. The overall figure for resolved/rectified complaints is generally reflected in the percentages for individual departments, etc. — with Social Services at 23%, Justice-Corrections at 21%, Saskatchewan Government Insurance at 25% and the Workers' Compensation Board at 28% — and is slightly up on our long term average of approximately 20%.

On the intake side of the business, 1,451 complaints were directed against Saskatchewan departments and agencies, with a further 1,989 made against the federal government, numerous municipalities, various businesses and professions and concerning legal issues and family disputes. Evidently many citizens are still unclear as to the Ombudsman's precise role and the office is considered a general resource for people with problems. While, my mandate may be restricted to investigating only complaints against the provincial administration, we readily assist all complainants as best we can with out-of-jurisdiction complaints. My officers are often able to guide individuals to an appropriate office or agency or to an appeal board or other recourse for assistance in pursuing their complaints. It may not be an exaggeration to say that bureaucracy surrounds us on all sides and many people are simply at a loss when having problems with either public or private forms of bureaucracy.

On a national basis, the year saw advances for all citizens from decisions in two Ontario court cases concerning the jurisdiction of the Ombudsman. Over the last decade Canadian courts have consistently viewed the remedial intent of Ombudsman legislation very broadly and these two new cases continue that trend. Specifics of the cases will be dealt with later on in this report.

Sadly, the year also saw the first closure of a provincial Ombudsman's office in this country. Effective December 31, 1990, the office of the Newfoundland Parliamentary Commissioner closed its doors, a victim seemingly, of the old fashioned notion that MLAs, sundry appeal processes and the courts provide adequate opportunity for citizens to obtain redress

of their grievances. I say old fashioned advisedly, because surely it was from a growing realization of the inadequacies of existing remedies that Ombudsman offices sprang up in Canada and around the world during the sixties and seventies.

Since then its been well established that because of the authority provided by legislation, an Ombudsman is the only official who can actually investigate complaints against the government, and is the only official who can do so with complete impartiality. I doubt anyone can seriously propose that the Ombudsman concept has not been a significant addition to the structure of government, or that the Ombudsman's function can be as well served by a return to pre-ombudsman days. Indeed, my office files contain hundreds of cases where clients had been denied satisfaction and were unable to take the matter further with the government, only to obtain redress because of the Ombudsman's ability to get at the facts, speak to everyone involved and emphasize the natural justice elements of the administrative process.

Given goodwill on both sides, the Ombudsman concept works well for citizens and government alike and I feel Newfoundland's decision is a step backwards in time.

The complaints received throughout the year were widely varied and didn't disclose any major systems issues. For myself, however, I continue to find myself at odds with the Criminal Injuries Compensation Board in their application of Section 11(a) of **The Criminal Injuries Compensation Act**. This section provides that the board shall, along with any circumstances considered relevant, ". . . consider and take into account: (a) any behaviour that directly or indirectly contributed to the injury or death of the victim;". While there are obvious reasons for including such in this **Act**, I am concerned to find it being used to exclude women subjected to spousal battery, when the victim has suffered previous abuse but stayed in the matrimonial home and was beaten again. Generally, this ignores the psychological dynamics in many spousal abuse situations.

Long term emotional and physical abuse often occurs over a period of years and such extended trauma can reduce the capacity of the victim to understand her options, or even to realize that she has any options at all.

There is a strong element of dominance in family abuse situations, often to the extent the abused spouse or child is literally terrified and quite unable to take what might seem the only reasonable action to those fortunate enough to have never experienced an abusive situation. I'm not suggesting the board is invariably wrong, but spouse abuse is a pernicious social evil

and the attitude that women should/could avoid being victims by merely moving out and should be excluded from criminal injuries compensation if they don't, is to me a distortion or misuse of the intent behind Section 11(a). An example of such a case is provided later on in the report.

Although I necessarily take issue with the government on a variety of matters throughout each year, I am pleased to note the working relationship between my staff and the public service remains good. This is very much to the advantage of our clients as co-operation will always be more productive than confrontation, and an Ombudsman's hope is to raise the awareness of administrative fairness in our public service staff. The good response we generally get from the utility Crown Corporations, and departmental branches such as Student Financial Services at Education and Debt Management and Credit Counselling at Justice is certainly encouraging. There may indeed be some truth to the notion that a long term but somewhat hidden benefit of an Ombudsman's Office is a gradual but definite improvement in public service attitudes to and treatment of citizens in general. It would indeed be gratifying to think that the lessons of the many cases supported by my Office have had an improving affect on the delivery of government services to the people of this Province.

BUDGET

The following table shows the approved budget for the 1990-91 financial year with comparisons from preceding years, and is presented for the information of the members.

	1988-89	1989-90	1990-91
Salaries	$503,200	$555,800	$555,800
Travel and sustenance	18,000	14,900	14,900
Other contractual services*	136,300	141,525	125,682
Material, supplies and equipment	8,800	10,075	10,428
TOTALS	$666,300	$722,300	$706,100

*These figures include monies allocated to our budget from the Saskatchewan Property Management Corporation for rental of accommodation, and postal and photographic services.

The above table shows a breakdown of my budget into four groups or categories. This is somewhat more detailed than is printed in the "Blue Book" when the expenditure estimates are published. The "Blue Book" only lists "Personal Services" and "Other Expenditures" at $555,800 and $150,300 respectively. The $150,300 total includes travel and sustenance; other contractual services; and our material, supplies and equipment.

Members will notice that monies allocated for "Other Contractual Services" were reduced in this past reporting period. This reduction is, for the most part, attributable to the Saskatchewan Property Management Corporation reducing our fees payable to that agency for rent of accommodation and for postal and photographic services.

The reduction has not directly affected our non-salary budget dollars, which, by exercising careful control over expenditures, has consistently remained near the $100,000 figure over the past several years. Most of these expenses are for telephones, vehicles, etc., which are fixed and cannot be eliminated.

STAFF

Faced with the usual high volumes of complaints, my staff responded in kind by maintaining the thoughtfulness and high investigative quality essential to our credibility. For this effort I would again express my sincere appreciation.

Although we are comparatively small in numbers, there were several comings and goings during this past reporting period, however, we appear to have stabilized by year's end. Roy Hodsman, who had been filling a vacant investigator position on a temporary basis in Regina was taken on permanently. Linda Charlton has left our Saskatoon office as Glenda Cooney returned from a leave of absence. Intake Officer, Laura Cook was on maternity leave from July through October. During her absence her position was ably filled by Ann Kennedy who now is with the Department of Culture, Multiculturalism and Recreation. Megan Demyen (nee Heath) on a leave of absence resigned to become full-time mother and homemaker. Myrna Lapchuk has remained with us filling the vacant position. For thirteen weeks during the latter portion of this year we were fortunate to have the services of Cynthia Sparvier, a University of Saskatchewan student who completed her practicum assignment with our Saskatoon office.

The present staff of the Office of the Ombudsman is as follows:

REGINA OFFICE

Gordon K. Mayer	Solicitor to the Ombudsman
Earl A. McKeen	Assistant to the Ombudsman
Murray Knoll	Investigator
Roy Hodsman	Investigator
Carol Spencer	Intake Officer
Debra Trembley	Executive Secretary
Myrna Lapchuk	Secretary

SASKATOON OFFICE

Gil Thomson	Assistant to the Ombudsman
Glenda Cooney	Investigator
Joni Sereda	Investigator
Laura Cook	Intake Officer
Joyce Strate	Secretary

NATIONAL OMBUDSMAN CONFERENCE

The National Conference of Ombudsmen was hosted by Nova Scotia Ombudsman, Dr. Guy McLean from September 19 to 21, 1990.

Delegates to this year's conference debated a range of issues involving aboriginal peoples, the environment and the investigation of complaints involving the police.

COURT CASES

I mentioned earlier that the Ontario Court, on two occasions, considered the jurisdictional authority of the Ombudsman to investigate complaints.

The first case, Re: Ombudsman of Ontario and the Ministry of Financial Institutions et al 71 OR (2d) 678 concerned whether the Ombudsman had the authority or jurisdiction to investigate the effect of decisions of Executive Council on the public or on other aspects of government. In addition the Court also considered whether the Ombudsman had the authority to recommend that such decisions be reconsidered by government.

The Ontario Ombudsman Act, which is similar to **The Saskatchewan Ombudsman Act** precludes the Ombudsman from investigating and by implication reporting on ". . . deliberations and proceedings of the Executive Council or any committee thereof . . .". In considering the remedial intent of the Ombudsman legislation the Court concluded that the legislation excluding the authority of Ombudsman intervention should be strictly construed so as only to exclude ". . . the process of deliberation and the deliberations of the Executive Council. Beyond that, the Ombudsman has jurisdiction to inquire into the effect of the Orders-in-Council on the administration at large and on the public affected".

The second case Re: Ombudsman of Ontario and the Board of Radiological Technicians 72 OR (2d) 632 involved the authority of the Ombudsman to investigate a decision of a tribunal the members of which while ultimately appointed by government were recommended by others.

The Court concluded that the Board in question "... authorized a provincially-assumed regulatory responsibility ..." even though the legislation had gone a considerable distance in creating a self-governing organization, and hence within the jurisdiction of the Ombudsman.

PART II

CASE SUMMARIES

Intake Officer Summaries

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CASE SUMMARIES
Intake Officer Summaries

I have, in past years, indicated the valuable contribution of my intake officers.

While their primary function is to receive complaints, the process of initial inquiry does sometimes lead to a resolution of the problem without the need for assignment to an investigator.

The following is a small sample of the kind of complaints they deal with on a regular basis.

EDUCATION

File No. — 90-7000-10-41

A student no longer residing in Saskatchewan had written to the Department of Education, Student Financial Services regarding her student loan. The correspondence delivered by the student was enclosed with her student loan payment. This payment had not been documented on her Saskatchewan Student Loan file prior to the loan file being placed in collection. The student contacted this office distraught regarding the consequences of having her student loan in collection. The student's complaint was referred to a representative of the Department of Education, Student Financial Services who provided advice regarding proof/verification of her payments. Following this advice the student provided the verification of her payments to both Saskatchewan Education and my office and subsequently advised that the complaint was successfully resolved as a result of this presentation.

JUSTICE

File No. — 90-2000-40-16

A woman, who maintained friendly communication with her former marriage partner complained that her former partner, who had become destitute, was being taken to court by the Maintenance Enforcement Office. This court action was creating emotional and mental hardship for both herself and her former partner. After inquiries to the Department of Social Services and the Maintenance Enforcement Office a representative of this office was able to inform the woman that the pending court action was in the best interests of herself and her former partner because it would

resolve the question of her former partner's ability to pay both the maintenance arrears owed to her and future maintenance support entitlements. This resolved the woman's mental and emotional stress regarding the pending court action and the file was closed without formal investigation.

File No. — 90-2200-00-11

This couple complained that they were having difficulty obtaining information from the Office of the Rentalsman in regard to an electrical appliance in a rental accommodation which was giving off a shock. They were immediately referred to the Saskatchewan Power Corporation which handles electrical inspection and an electrical inspection was conducted by the Corporation on an urgent basis. A representative of the Corporation followed up to this office stating that SPC was sending a notice to the landlord to have the electrical appliance repaired and would proceed against the landlord in the event the appliance was not repaired within a specific required time period.

SASKENERGY

File No. — 90-53000-10-14

A person complained that she had had a vehicle accident on the day she was to pay her SaskEnergy bill. She indicated that two days later she contacted SaskEnergy by telephone and advised them why the bill had not been paid and that she would pay it the following day. She paid the bill the following day, however, that same night her energy service was disconnected. She phoned the next day to have the energy service reconnected. The service was reconnected, however, she was charged a $40 reconnect service fee. She felt the service fee should not have been charged as she had advised SaskEnergy of her extenuating circumstances prior to the service disconnect. Her complaint was referred to a representative of SaskEnergy who agreed to credit her account with a $40 reconnect service charge. The person considered her complaint to be resolved.

SASKATCHEWAN POWER CORPORATION/SASKENERGY

File No. — 90-27000-10-46

A student who had been unable to locate full employment and was working two part-time jobs encountered difficulty paying her Saskatchewan Power Corporation and her Saskatchewan Energy bills. She was concerned that her service may be discontinued. She said that her ability to pay had been

further hampered by her room-mate refusing to pay shared costs. She was referred to the Department of Justice, Debt Mediation Service for budgeting assistance and subsequently referred to representatives of both the Saskatchewan Power Corporation and SaskEnergy with a request for an arrangement to pay a lesser amount over a longer period of time. Both corporations accepted the arrangement to pay and her complaint files were closed as resolved without investigation.

SOCIAL SERVICES

File No. — 90-23000-10-188

This person from a rural community complained that for a period of time during 1989 she should have been classed by the Department of Social Services as being fully disabled and as such be allowed the benefits as a fully disabled Saskatchewan Assistance Plan recipient. She said that instead of receiving the benefits as a fully disabled Saskatchewan Assistance Plan recipient she had received a lesser benefit. She was advised to collect medical data which would support her complaint and when the medical data was collected to forward it to the Supervisor for the Department of Social Services Region in question. She collected the medical evidence and through discussions with the Supervisor for the Social Services Region in question, the complaint was resolved without a formal investigation.

File No. — 90-23000-10-252

An old age pensioner contacted this office stating that she was responsible for maintaining her four grandchildren and that the benefits she received from the federal government as a pension recipient and from the Family Income Plan as a head of household were not sufficient. After interviewing this complainant a representative of this office referred her to the Department of Social Services for a financial assessment. This assessment revealed that the senior citizen had been receiving benefits for a household of three children as opposed to a household of four children. The senior citizen was referred to the Family Income Plan for the purpose of correcting her eligibility status with that plan to include all four children in her care. The complaint was considered resolved on the referral to the Family Income Plan.

File No. — 90-23000-10-346

An employed person complained that the Department of Social Services had expected him not to use six weeks of employment earnings earned in 1989/1990 for the purpose of paying his past due debts and as such

had classed him as ineligible for benefits from the Department of Social Services, Saskatchewan Assistance Plan. A representative of this office assisted the complainant with an inquiry to the Department of Social Services, Regional Office in question and the preparation of a letter of appeal regarding the complaint. The complainant filed the letter of appeal with the Department and reported that the Department had reconsidered his need to repay past due debts and considered him eligible for minimum basic needs including rent and food allowance so long as he continued to meet the employment search eligibility criteria for fully employable Saskatchewan Assistance Plan recipients.

File No. — 90-23000-20-09

An adult child of a senior citizen who received Saskatchewan Assistance Plan benefits indicated that his parent was having difficulty obtaining medical/pharmaceutical costs associated with his parent's heart condition. Benefits the parent received from the Department of Social Services did not provide for full coverage of these needs. The adult child indicated that his parent had had three heart attacks and that the need for medical/pharmaceutical coverage was urgent. Because of the urgent nature of this complaint, it was referred immediately to the Deputy Minister of the Department of Social Services for attention. A representative of the Deputy Minister's office provided the parent with a Plan II Health Card which covered the cost of the pharmaceuticals required. Other medical treatment needs such as special transportation for medical purposes, etc. would be reviewed on an ongoing/as needed basis for this recipient. The complaint was considered resolved and no formal investigation was conducted.

File No. — 90-23000-20-46

A parent of a teenaged child signed a voluntary agreement with the Department of Social Services to have her child taken into care as she could not care for the teenage child due to the child's behavioral problems. The parent complained that the child was living at large in the community and was in need of protection and that Department representatives had not apprehended the child. The matter was reviewed by this office and referred to the Department of Social Services for a report. The Department of Social Services reported that they were and had made attempts to apprehend the child but to date had been unsuccessful. The Department indicated that they would continue to work with the parent in an attempt to successfully locate and apprehend the child and arrange appropriate custodial living accommodations for the child. Several weeks after the initial complaint, the complainant advised that the Department had worked with

her and had been successful in locating and apprehending the child who had been placed in a foster home and that she would continue to meet with the Department representatives in regard to future custodial needs of her child. The complaint was considered to be resolved as the Department had been and was attending to the complaint and no investigation was initiated.

File No. — 90-23000-20-52

A woman approached our office on behalf of a teenager who required Social Assistance Plan Benefits as a child out of the parental home. The woman indicated that she had come to know the teenager through her children and that she had a community interest in the future welfare of this teenager. She stated the teenager had been adopted as an infant and his relationship with his adoptive parents had broken down. He anticipated living on Saskatchewan Assistance Plan Benefits independent of his family in a light housekeeping situation while concluding his high school education. She stated she was concerned that he required a more supportive environment than a light housekeeping situation and that a more supportive board and room education arrangement should be arranged for him by the Department of Social Services prior to the commencement of the 1990 fall high school term. She indicated the teenager was receptive to the board and room concept but the Department of Social Services had not resolved her concerns about establishing a board and room arrangement prior to the commencement of the fall school term. A representative of the Department of Social Services resolved the complaint by arranging for the teenager to receive eligibility for Saskatchewan Assistance Plan Benefits in the context of a board and room financial arrangement. This financial arrangement was made prior to the commencement of the 1990 fall school term. The community advocate considered the complaint resolved as did the teenager affected and the file was closed without formal investigation.

PART II

CASE SUMMARIES

General Summaries

PART II
CASE SUMMARIES
General Summaries

CRIMINAL INJURIES COMPENSATION BOARD

File No. — 88-2040-00-06

In August of 1988 my office was approached by a woman who had been assaulted by her common-law husband. She had received serious injuries including complete loss of sight in one eye. The common-law husband had been charged by police, convicted in the courts and had served a term of imprisonment for this offence. The woman had applied to the Criminal Injuries Compensation Board and sought an award for pain and suffering, emotional trauma and miscellaneous expenses incurred. Her application was denied and the decision rendered included the following:

> "After careful consideration the Board recommends denial of this application for compensation because the applicant knowingly put herself into circumstances that caused the injury to herself. She was aware of the accused's tendency to violence and yet continued to associate with him, which association resulted in injuries to herself. The Board therefore invokes Section 11(a) of the Act which states:
>
> > The Board, in making an order under Section 10, shall consider and take into account all such circumstances as it considers relevant to the making of the order and, without limiting the generality of the foregoing, the Board shall consider and take into account any behaviour that directly or indirectly contributed to the injury or death of the victim.
>
> This application is therefore denied."

Our investigator reviewed the evidence which had been obtained by the Criminal Injuries Compensation Board prior to rendering their decision. Additionally, my investigator met with the victim and the Board Members. It was apparent that the facts of this case were not in dispute:

> The complainant, Ms. C. had been assaulted by her common-law husband, Mr. W. in the early morning hours of March 3, 1987. She sought medical attention that morning which eventually resulted in surgery to her left eye. She now had no sight whatsoever in the left eye. She did not report this assault to the police until May 5, 1987 when she was seeking a restraining order after Mr. W. had allegedly

threatened her life. Prior to this point, Ms. C. was afraid to report to the police as Mr. W. had threatened to kill her if she did so.

Background information obtained by the Criminal Injuries Compensation Board confirmed that Ms. C. had been previously assaulted by Mr. W., including an occasion in August of 1985 when she sought medical treatment and psychiatric care. Indications are that she had been in several transition homes and women's shelters and that she had been a disruptive force in these homes. Subsequently, when she was referred to the transition house in March of 1987, she was apparently refused admittance.

In a meeting with the Board Members they explained that Ms. C. knew of Mr. W.'s cruel propensities and tendency to violence, but she continued to live with him. Therefore, "she could reasonably expect to be assaulted and receive injuries". The Board concluded that Ms. C. had contributed to her injuries.

Although neither I, nor any members of my staff profess to be experts in the area of physical abuse of "wife battering", we did approach a local transition house for assistance in providing research and literature in this area. The data we obtained suggested that our complainant's behaviour was not uncommon and that many victims of physical abuse encounter difficulties removing themselves from these types of abusive relationships. One article suggested that "those who work with assaulted women say 80% to 90% of women leave and return to the relationship more than once".

There are reportedly many reasons why a battered woman returns to that relationship. She may want the relationship to continue. She may believe his promises or his threats. She may feel guilty about breaking up the family. She may feel worthless and fear that she cannot make it on her own. Even when she does go back, she tests the relationship to see if it can be changed. She needs to be sure she's given the relationship every chance. Though nearly all assaulted women go through this pattern of ambivalence, each does so in her own way. She may leave and return few or many times; she may come to a resolution gradually or suddenly. This ambivalent stage may last for years.

The circumstances of our complainant's assault did not suggest that she had done anything to provoke this assault. Consequently, I had difficulty in understanding how Ms. C. had "put herself into circumstances that caused the injury to herself". This was particularly unsettling in light of the literature related to spouse abuse which confirmed the reasons why women have such a difficult time leaving these abusive situations.

In the case of our complainant, the Crimes Compensation Board was concerned that Ms. C. returned to their former residence during Mr. W.'s incarceration. Further, Mr. W., upon his release from the Correctional Centre, had moved back into this residence with Ms. C.

Ms. C., by way of explanation, indicated that while in prison Mr. W. told her that he would not return to that home upon his release. However, when he was released, he reneged on his prior agreement and moved back in. She went on to say that she was unable to move, as she was in the midst of the first year of a two year training program. Her son was familiar with the children in the neighborhood and his daycare was also in the area. She felt that there would be too much stress for her to move prior to the conclusion of her studies and therefore waited approximately two months before moving. Following her move, she reported no further contact with Mr. W.

Interviews conducted by my investigator satisfy me that the Board concluded that Ms. C. knew of Mr. W.'s propensity to violence towards her and that by continuing to reside with him, she accepted the consequences of any and all violence directed at her. This approach certainly has the appearance of the legal maxim *volenti non fit injuria* (voluntary assumption of risk).

Early instances of the application of the doctrine tended to concentrate on the knowledge of the risk, or the willingness to take the risk. More recently the Supreme Court has reshaped the doctrine so as to restrict its application to instances where an agreement, express or implied exempts the defendant from liability. It is only in cases where the plaintiff's conduct is serious or where he has encouraged or fully become part of the dangerous activity where he could be said that he voluntarily assumed the risk. What seems to be more preferable is to find a plaintiff contributory negligent. Quite likely this view rests with the Court's reluctance to deny a plaintiff all financial help, thereby spreading out an award of compensation, in the hope that both the plaintiff and defendant will be deterred from future wrongful conduct.

Had the case of Ms. C. come before the Courts by way of a court action, I doubt very seriously whether Ms. C.'s actions would be considered *volens* thus denying any award for compensation.

The Criminal Injuries Compensation Board is not a Court of Law and accordingly not bound by similar standards. On the other hand, an examination of the civil consequences of an act is relevant, as it gives the reader some appreciation of where the Board sees itself in terms of the applicant's culpability.

While the Board itself may have given little, if any thought to the doctrine of *volenti non fit injuria*, an analysis of the Board's decision convinces me that the test used by the Board in determining whether Ms. C. was a victim, is significantly lower, than the test adopted by the present common law. The question of whether this is fair or appropriate ought to be asked.

The Ombudsman of Ontario recently presented a special report to the Ontario Legislature, as a result of investigations of complaints against the Ontario Criminal Injuries Compensation Board. One case involved a battered wife and one a battered male.

In both cases the Ontario Board, declined to make an award, on the basis of Section 17(1) of **The Compensation for Victims of Crime Act**, 1971. Section 17(1) of the Ontario **Act** while not identical to Section 11 of the Saskatchewan **Act** certainly is similar enough to warrant an examination of the cases and subsequent decisions.

In considering the decisions of the Ontario Board, the Ontario Ombudsman concluded the following:

1. That the decision of the Criminal Injuries Compensation Board was wrong and unreasonable.

2. The Board in applying Section 17(1) of **The Compensation for Victims of Crime Act**, is acting in accordance with a practise which is unreasonable as the Board has no policies or directives to identify factors to be considered in assuming such application.

I was informed by the Ontario Ombudsman's Office that the Standing Committee of the House had supported the recommendation of the Ontario Ombudsman.

The Ontario Ombudsman was guided by the decision of the Ontario High Court of Justice, Divisional Court in Dalton v. Criminal Injuries Compensation Board (1982), 36 D.R. (2d), 394. The Court in Dalton found that while certain contributing behavior of the claimant might be sufficient reason to deny an award if the injuries were slight, if the applicant was severely injured or killed, it would not be sufficient reason to deny an award.

Furthermore, the Court concluded while the behaviour of the complainant is appropriately a consideration if he is not the major author of the misfortune, an award ought not to be refused, but rather reduced, depending upon the degree to which the claimant's behaviour contributed to the injury.

The approach urged by the Ontario Courts on the Board seems to be consistent with the approach taken by the Court in the application of the *volens* doctrine, namely, rather than denying the claim except in the most serious cases, apportion the damages between the parties involved.

The position taken by the Saskatchewan Court of Appeal in R. v. Crimes Compensation Board of Saskatchewan (1986), 2 W.W.R., 696 certainly doesn't inhibit or prohibit the Board from considering the question of contribution. On the contrary, the Court has concluded that it is quite proper for the Board to consider the behaviour of the applicant before making an award. What I suggest is that rather than making it an all or nothing proposition, equity would be better achieved where injuries are serious, to apportion responsibility and subsequent compensation.

In the case of Ms. C., it's obvious she incurred some risk by continuing to reside with someone who has previously assaulted her. On the other hand, literature dealing with battered wives indicates it is not unusual for a woman to remain with a batterer for some time, for a variety of reasons. Regardless of the reasons why Ms. C. remained with Mr. W., surely he, rather than she, was the major author of her misfortune.

It was, therefore, my tentative view, that the decision of the Criminal Injuries Compensation Board was wrong and unreasonable and I proposed the following recommendations:

1. That the Criminal Injuries Compensation Board award appropriate compensation to Ms. C. for pain and suffering as a result of the injury sustained by her.

2. That the Board provide full written reasons for all decisions made under **The Criminal Injuries Compensation Act**.

My report was presented to the Chairman of the Criminal Injuries Compensation Board on February 15, 1989.

Response of the Criminal Injuries Compensation Board was provided by letter dated March 21, 1989:

> "The Board has reviewed your February 15, 1989 letter very carefully and has reviewed the circumstances and the background relating to the injury in question. It appears to the Board that the applicant, Ms. C., in addition to "returning to reside with the offender", was late in reporting the matter to the law enforcement authorities. This prevented a full and thorough examination of the events that resulted

in injury to herself. In addition, the applicant was not co-operative with the Self-Help agencies and this, in our opinion, is another factor that militates against entitlement to compensation. In view of the above, the Board once more indicates that it is not prepared to recommend compensation to Ms. C. The Board further points out that the Board first determines entitlement and then after entitlement has been satisfied, the Board determines the amount of recommended compensation. In other words, the seriousness of the injuries is not a determining factor insofar as entitlement is concerned."

As my recommendation to the Chairman of the Criminal Injuries Compensation Board was not accepted, my next course of action, as outlined in **The Ombudsman Act** is to provide a report to the Minister in charge of the Criminal Injuries Compensation Board. In this case, the Minister in charge is the Justice Minister. Accordingly, on January 24, 1990 I provided the Honourable Gary Lane, Minister in charge of the Criminal Injuries Compensation Board with a detailed report related to Ms. C. This report concluded: "That the decision of the Criminal Injuries Compensation Board not to award Ms. C. compensation for her injuries suffered as a result of the unprovoked attack was wrong and unreasonable."

I also made the following recommendations:

1. That the Criminal Injuries Compensation Board award appropriate compensation to Ms. C. for pain and suffering as a result of the injuries sustained by her.

2. That the Criminal Injuries Compensation Board provide full written reasons for all decisions made under **The Criminal Injuries Compensation Act**.

Although my report was provided to the Justice Minister on January 24, 1990, I had still not received any formal response by the time this report was sent to the printers. It was, in fact, this lack of response that has prompted me to include this case in my Annual Report as there appears to be little hope that my recommendations on behalf of Ms. C. will be accepted.

EDUCATION

File No. — 89-7000-10-31

A young woman contacted our office complaining about the collection efforts of one of the local credit agencies. This agency was attempting to collect payments on a student loan which the woman had received two

years earlier. She advised that she was making monthly payments on her Canada Student Loan and had thought that she had received remission on the balance of her loan. Consequently, she could not understand why the collection agency was pursuing her.

Investigation of this complaint confirmed that the woman had successfully completed her course of studies and would have been eligible for remission on the Saskatchewan portion of her student loan, of approximately $7,000. Unfortunately, the student had failed to make application for remission within six months of completion of her program. After the deadline had passed, the Department of Education had turned the matter over to a collection agency to collect the loan.

Review of this particular file confirmed that application forms for remission were sent to the student's last known address. Additionally, the Department stated that they had also sent application forms for remission to the parents' address. However, the student had relocated from this rural community to the City of Regina and had also married. She stated that she had no recollection of receiving any application for remission. She advised that after she had left her home community, all of her mail was forwarded to her by her parents. She, therefore, believes that anything which her parents would have received on her behalf would have been forwarded to her.

Upon graduation from her program, she contacted her local bank manager to determine the amount of her loan. She was provided with an approximate figure of $3,000 and a payment schedule was arranged. She continued to make these payments and assumed that the balance of the loan had been forgiven, based upon prior approvals which had been received from the Department.

Cases of this nature do present a real challenge for the Ombudsman. The Department has seemingly fulfilled all their commitments to the student and has mailed the necessary application forms in a timely fashion. The student insists that she did not receive the documents but concedes that she had moved and had not provided her new address to the Department. At the same time, the program which she had been approved for was based solely upon successful completion of her studies and upon making application for remission within six months of completing her studies. Certainly, she had met the primary obligation of successfully completing her studies but technically, she had failed to meet the six month deadline for making her application.

In the preceding years, my office had seen at least three similar complaints where students had lost eligibility for remission based upon their late applications. In two of these cases, my office was able to successfully intervene and convince the Department that there were "extenuating circumstances" which warranted an exception. However, after a while, defining "extenuating circumstances" can become quite difficult — particularly when significant sums of money are involved.

Discussions took place amongst my own staff members as well as with the officials at the Department of Education concerning possible alternatives to the six month deadline. The Department did not believe the deadline could be altered, due to the integration of their own program with the Canada Student Loan Program. Additionally, there was the need to arrange repayments in a timely fashion. The question then arose as to the possibility of an "administrative penalty" for late applications, where students had successfully completed their studies.

Eventually my office did make a recommendation to the Department of Education, that the Department should consider imposing an administrative penalty rather than completely refusing remission to students who would otherwise be eligible but for their late application.

Less than two weeks after my report, I received a response confirming that the Department of Education had already implemented a new policy with respect to acceptance of late applications. Their letter in part read ". . . I am pleased to advise you that the six month deadline for submitting remission/forgiveness applications was recently reviewed by the Department. As a result, the Student Financial Assistance Branch now accepts all remission/forgiveness applications from students with course end dates of April 1989 or later, regardless of whether or not they have submitted an application within the six month deadline. Please note that a small penalty is imposed for late applications and the six month deadline continues to be a stated requirement in all program literature."

At the same time, the Department advised that they are always willing to examine "extenuating circumstances" related to any individual student's failure to apply for remission/forgiveness benefits. This consideration was applied to our own complainant and she was subsequently granted full remission on her Saskatchewan Student Loan notwithstanding that her application was late.

This type of resolution to a recurring problem is ideal from the perspective of the Ombudsman. Not only was this individual complaint resolved, but

a new system was put in place which should provide a much fairer solution to similar problems which occur in the future.

In concluding this file, I expressed my sincere appreciation to the Department for their co-operation and their innovation in seeking a long term solution to this problem.

File No. — 90-7000-10-20

There are occasions when departments are quite responsive to our intervention. In this case, my office was contacted by a student at a private business college who had received a student loan but, throughout her course, was aware that this was a lesser amount than received by other single parent students in similar circumstances.

It was not until near the end of her course that the complainant discovered a mistake in her assessment form. She had been credited with $12,000 in assets which she did not possess.

By the time the complainant had successfully appealed this matter and submitted the request for reassessment, there were fewer than 45 days before the end of the course. While Student Financial Services felt she was entitled to an additional amount they refused to grant it to her because "requests must be submitted at least 45 days prior to the end of the course".

The complainant had been unable to fully pay her tuition and although she had successfully completed her course, the school would not release her marks. This seriously impeded the complainant's efforts to find employment.

In giving notice of the complaint, we commented that this decision seemed unfair because the over assessment of Ms. B.'s resources was a mistake at the outset (although only belatedly discovered) and her eligibility for a higher student loan existed throughout the school term.

Saskatchewan Education promptly responded in the complainant's favour. A further departmental review determined that the complainant was eligible for additional assistance. In short order, the complainant received a cheque for $5,100. Naturally she was delighted with this response, and was able to pay the outstanding tuition and accumulated debts and to wholeheartedly pursue her employment opportunities.

File No. — 90-7030-00-01

The office received a complaint from a former Saskatchewan teacher now resident in Alberta. She had recently purchased one year of prior teaching service (1974-75) from the Saskatchewan Teachers' Superannuation Commission (STSC) and had then transferred this one year of service to the province of Alberta. She expressed concern that she was required to pay the sum of $5,795.30 whereas the amount actually transferred to Alberta was only $4,301.54. She believed that she should be entitled to a refund of the difference.

In addition, our complainant requested the transfer of her one year of service accompanied by a cheque in early February of 1989 whereas the actual transfer of funds did not occur until mid December of 1989. She believed that this delay was unreasonable and that she was entitled to interest on her funds during the months of delay.

Investigation of this complaint focused on **The Teachers' Superannuation Act** and Regulations. The Regulations prescribed the precise interest rate to be applied on a yearly basis. In this manner, the Saskatchewan Teachers' Superannuation Commission was able to determine the precise costs for purchasing the one year of service in Saskatchewan.

A similar calculation was completed in the province of Alberta by the Alberta Teachers' Superannuation Plan. Once Alberta completed their calculations, they then advised Saskatchewan of the amount of funds which they would require to purchase the one year in Alberta. The legislation governing the Alberta calculations resulted in a lower amount being requested, the difference being $1,493.76.

In addressing this discrepancy with the Saskatchewan Superannuation Teachers' Commission, we reviewed the "reciprocal agreement" involving the provinces of Alberta and Saskatchewan. This agreement suggested that the discrepancy in the amount requested ". . . shall be dealt with by agreement with the teacher and the exporting plan". However, we were informed that no such agreement was in effect.

It was the view of my office that the Saskatchewan Teachers' Superannuation Commission had derived an unfair benefit from this transfer of funds. Accordingly, we recommended that this teacher be refunded the difference between the amount paid to the Saskatchewan plan, and the amount which the Saskatchewan plan paid to Alberta.

Similarly, it was our view that the delay of ten months in completing this transfer was excessive and we recommended that interest be paid to the teacher based upon this delay.

I am pleased to report the Saskatchewan Teachers' Superannuation Commission promptly accepted both of my recommendations. Accordingly, a total refund was issued to the teacher in the amount of $2,079.08.

The thank you letter which we received from this complainant was also gratifying. "I wish to offer to you and to each staff member who worked on my behalf in my dispute with the Saskatchewan Teachers' Commission my sincere thanks. It is gratifying to know that the dedicated people in your office can make a difference in defending the ordinary person against the bureaucratic machine."

HEALTH

File No. — 90-13000-10-02

As more people in Saskatchewan become familiar with the equality provisions of the Canadian Charter of Rights and Freedoms and the Saskatchewan Human Rights Code, complaints of discrimination increase. While it is encouraging that people are asserting their rights, not all accusations of discrimination can be substantiated. In the following case the complainant thought the Saskatchewan Department of Health was discriminating against her on the basis of her marital status.

In Saskatchewan a married person can choose to use the surname he or she used immediately prior to marriage or his or her spouse's surname. No documents need to be filed nor any fees paid and either choice becomes his or her "legal" name. On the other hand, a divorced woman or man (or anyone else for that matter) has to pay $75 for a "legal" name change plus $10 to have the change published in The Saskatchewan Gazette. The complainant contended that this discriminated against divorced women.

A note is in order regarding the use of the term "legal". No law exists obligating one to register a name change at Vital Statistics. One can legally change one's name at any time without filing any documents or paying any fees, provided the change is not for fraudulent purposes. Many institutions, however, will insist that a person use his or her "legal" name. By this they mean the name registered at Vital Statistics. One may find, therefore, that although no legal obligation exists to register a name change

at Vital Statistics, for practical purposes one may really have no choice. For instance, the name on one's driver's license must be one's "legal" name.

With regard to the complainant's allegation of discrimination, I concluded that it could not be substantiated. Within a marriage, both men and women can "legally" change back and forth between the names they used immediately prior to marriage and their spouses' names without paying any fees or filing any documents with Vital Statistics. Likewise, after divorce, both men and women must pay $75 for a "legal" name change plus $10 to have the change published. The **Act**, therefore, is not discriminatory on the basis of marital status or sex as contemplated in the Saskatchewan Human Rights Code and the Canadian Charter of Rights and Freedom.

The complainant's allegation no doubt stemmed from her ignorance of the provisions of **The Change of Name Act**, an ignorance likely shared by most people. I asked the Director of Vital Statistics if the complainant's allegation came up often. He said no, primarily, he thought, because most lawyers who handle divorces are aware of the **Act's** provisions and advise their clients accordingly. Our complainant was apparently not so advised.

JUSTICE

File No. — 89-2000-30-255

Determining responsibility for lost property at Saskatchewan's correctional centres has been an ongoing problem. Inmates are told when they arrive at a correctional centre that the Centre will not accept responsibility for personal property, and inmates sign a waiver to that effect. Occasionally, however, the Centre finds itself in control of an inmate's property and has to, or at least ought to, accept responsibility for loss or damage.

When our complainant was admitted to the correctional centre he was wearing a brown suede sports jacket valued at $160. The admitting staff told him that his jacket was not authorized clothing and therefore could not be brought in. They asked him for an address to which they could mail the sports coat and had him sign a trust deduction slip to cover the cost of postage. The sports coat was boxed and mailed uninsured. The coat apparently did not arrive at its destination and the correctional centre refused to accept responsibility.

We contacted Canada Post to see if it could help. Canada Post explained that because the parcel was mailed with regular postage there was no way it could trace it and assign responsibility for the loss.

The Correctional Centre had done its own investigation and discovered that the only evidence it had was a deduction slip for postage which did not indicate what had been mailed. Nevertheless, the Centre concluded that procedures were properly followed and the Centre bore no responsibility for the loss.

Our investigation, however, revealed that according to the Correctional Centre's own Standing Order 102 (J) 4b, "When property is sent out by mail all property is to be listed with a detailed description, for example, brand names, style, type of article, mode number, serial number, etc., and a note made on the list that the property was mailed out, date mailed, and signed by staff doing the packaging." Evidently procedures were not properly followed.

We could find no evidence that the complainant was told he had the option of insuring the parcel containing his coat. He was simply told to sign a trust deduction slip for postage. The Centre's accounting department made the decision to send the parcel by regular post.

I concluded that since the inmate paid for postage, decisions regarding the type of postage should be made by the inmate not the Correctional Centre. Since the accounting department had made the decision, the Centre should have accepted responsibility. The Centre responded that inmates have always had the option of insuring mail and needed only to indicate their wishes on the trust deduction slip. Since the complainant gave no instructions on the deduction slip the Centre claimed it was not unreasonable to assume that he wanted it sent by regular mail. The Centre, however, could not confirm whether the complainant had been apprised of his mailing options, and this I believe, is a key point.

Inmates live in circumstances of restricted freedom and are discouraged from questioning instructions given by staff. One might have reasonably expected, therefore, that when the admitting staff told the complainant, to sign a trust deduction slip for postage, he would simply follow instructions without question. Furthermore, the complainant, who was in the process of being admitted, might have been expected to have his mind focused on other matters besides the safety of his outgoing mail, for instance, his present circumstances and his immediate future. In light of the above I concluded that the Centre should advise inmates of their mailing options and not assume that they are already aware of them.

The Centre agreed and advised me that in the future correctional centre policy would require an inmate be given the opportunity to indicate whether

he wishes his mail to be insured. The Centre, however, continued to refuse to accept responsibility for the complainant's missing sports coat.

This seemed quite unfair to me. The Centre was agreeing that changes were necessary to ensure that inmates were treated fairly, but was refusing to extend the benefits of the changes to the inmate whose complaint had prompted the change. I brought this to the attention of the Centre and it agreed, somewhat reluctantly, to compensate the complainant for the loss.

While disputes will no doubt continue over responsibility for lost property, every refinement in the assignment of responsibility helps reduce their number.

File No. — 90-2000-20-08

A complaint was received from an inmate at the Regina Correctional Centre that the sentence calculated by the Correctional Centre was longer than the one imposed by the Judge, in the court room. The inmate stated that he had seen the warrants held by the Correctional Centre and that they did in fact add up to a total of 24 months and 15 days. However, the inmate insisted that the Judge had specifically told him that his aggregate sentence would be 23 months and 15 days. He, therefore, felt an error must have been made at the court house.

The first step in investigating this complaint was to obtain a transcript of the proceedings at the court house. In fact this inmate had been sentenced on two different days and a total of 8 convictions were registered on these two dates. Some of the sentences were consecutive while others were concurrent. Even the Judge, at the time of sentencing, recognized the complexity of the total sentence and did specifically state the sentence would be 23 months and 15 days.

Upon confirming the Court's intentions, my investigator travelled to the Correctional Centre to review the actual warrants. To our surprise, the Correctional Centre not only held the warrants on the 8 convictions registered on the two court dates, but held one additional warrant as well. The additional warrant was for a conviction for breach of probation and had a sentence of two months consecutive. My investigator expressed some surprise since 1 conviction for breach of probation was already registered and thus, in effect, the inmate had two separate convictions for breach of probation.

The next step in this investigation was to contact the court house to clarify the circumstances surrounding this additional conviction. The Clerk of the Court was able to confirm, almost immediately, that an error had been

made in the issuing of the second warrant on the breach of probation charge. The disposition of this particular charge was supposed to have been a "Stay of Proceedings" and not a conviction. Consequently, it was agreed that the inmate's sentence had been extended by two months beyond that intended by the courts.

The appropriate notification was provided to the Regina Correctional Centre and they in turn reduced the inmate's sentence accordingly. As the inmate was at an early stage of his sentence, no adverse effect consequences resulted from this error. The sentence has now been properly amended and the problem rectified to everyone's satisfaction.

It is relevant to observe that this correction was made without any formal recommendations from my office. It is quite common for government agencies, upon learning of an error, to be anxious to correct that error without waiting for any formal recommendation. Such co-operation is indeed appreciated.

LIQUOR LICENSING COMMISSION

File No. — 88-16050-00-01

In August of 1988, a licensee operating in leased premises complained that the Liquor Licensing Commission refused to reinstate their liquor license without submission of a new application and a fee. The existing license had been cancelled by the Commission when a dispute arose about the lease terms and the landlord physically seized the premises. The lease was due to expire in about two weeks time and in anticipation of the actual expiry date, the landlord had already filed an application for licensing with the Commission. An interim license was then granted to the landlord when he took over the premises and paid the required licensing fee.

The licensee, viewing the seizure of the premises as a violation of the lease, applied to the Court to enforce the lease terms. Within a week, the licensee regained possession of the premises, and having previously advised the Commission of the plan to fight the seizure in court, then requested the Commission reinstate the license without charge as it had been improperly cancelled. However, the Commission's position was that once cancelled, a license could not be resurrected and it declined to reinstate. An offer was made to provide an interim license if an application and fee were paid. The result of the dispute was that no license was issued to the licensee for the few remaining days of the lease. The landlord then took over the premises, being able to continue operation as the interim license granted in the midst of the civil dispute was still valid.

This licensee then contacted my office, complaining the actions of the Commission were improper and resulted in a loss of revenue for the remaining days of the lease.

The issue we examined was whether it was lawful for the Commission to cancel the license and if not, was the Commission responsible for the resultant damages.

The Liquor Licensing Act, specifically Section 79, provides the Commission authority to suspend or cancel a liquor license. The **Act** also states that when a suspension occurs, there must be a hearing within 30 days of the suspension. Furthermore, the **Act** stipulates that no cancellation shall occur until the licensee has been given full opportunity to be heard.

The Commission staff knew that the landlord physically obtained possession and the licensee disputed the seizure and planned to resolve the issue by application to the court. In my estimation the actions of the Commission, in cancelling the license prior to a hearing as required by **The Liquor Licensing Act**, appeared to be in contravention of the legislation. The Commission's offer to re-issue an interim license once the licensee regained the premises also appeared contrary to the legislation, as the **Act**, states that once a license is cancelled another cannot be issued for a period of at least one year.

Therefore, the recommendations made to the Commission in March of 1989 were that the Commission not cancel **or** suspend a liquor license except in accordance with the **Act** and that our complainant be compensated for loss of revenue.

In replying to our recommendations, the Commission sought the advice of the Civil Law Branch of the Department of Justice. Their opinion was consistent with our view that a liquor license cannot be cancelled without a full hearing. On this point, the Commission accepted our recommendation that cancellation not occur unless there is a full hearing. However, their counsel stated (quite correctly) that the Commission had the authority to suspend the license of our licensee, since a condition of the license is that the proprietor have possession of the premises. The point was made that it was not entirely clear that a cancellation had occurred; that perhaps this was merely a "suspension" in which case there is no legislative requirement for a hearing prior to suspension.

The recommendation for compensation to our complainant was rejected. The Commission's legal opinion was that the Liquor Licensing Commission

cannot be held legally accountable for damages as damages will result only if malice is involved with the decision. It was the Commission's legal view that neither dishonesty nor malice were involved, as the Commission's staff offered interim licensing once the licensee regained possession of the premises.

Having discussed the case further with the Commission's counsel, I set forth my recommendations again in July of 1989. Firstly, I maintained the Commission had cancelled the license, not merely suspended it, as our complainant had been required to pay a fee for interim licensing. I agreed that the proper course of action, given the loss of physical possession of the premise would have been suspension. Then once our complainant regained possession, it would have been possible to lift the suspension without further fees or applications.

Secondly, I accepted that legally, the Commission was not liable for damages. However, **The Ombudsman Act** seeks redress, not only on legal grounds, but from the point of view of fairness. I felt the Commission was "morally" obligated to compensate this complainant for damages because he was not treated fairly and in accordance with the **Act**.

The Commission's response, in October of 1989, maintained that legally they were not responsible to pay compensation. However, the Commission did view our investigation as positive in how the suspension/cancellation process could be improved and steps were implemented in this regard.

Subsequently in January of 1990, I made the case for compensation on behalf of my complainant to the Minister in Charge, noting as follows:

> "Ombudsmen have been given the authority to go beyond the legalities of a particular decision. No doubt it is incumbent on this office to satisfy itself that the government has acted lawfully, but in addition, it seems to me important for this office to consider the fairness of the decision as it relates to the individual involved. In this particular case, the Commission, while not legally liable to Ms. C., certainly acted unfairly in terminating the license, and when looked at from this perspective has a moral obligation to the complainant."

The Minister's response, in May of 1990, was appreciative of my Office's views with respect to suspension/cancellation processes. However, acceptance of my recommendation for compensation was still denied on the basis of no legal obligation. Thus, while the case had identified some error in the Commission's process, now put right, this was cold comfort to the complainant who did suffer some financial loss because of the way the matter was handled.

SASKATCHEWAN GOVERNMENT INSURANCE

File No. — 89-26000-30-104

This couple contacted my office when SGI denied them coverage for a theft claim they submitted under their Tenant Pak policy. SGI took the position that the couple knew the theft would occur. Therefore, the loss was not considered a "sudden or unexpected event" or an accident as stipulated in their policy and the claim was denied on this basis.

The circumstances around this claim are bizarre indeed. In the spring of 1989, our complainants had been threatened by an unsavory character attempting to collect on an NSF cheque. The cheque was a forgery but the couple were still intimidated. The couple then purchased insurance, fully advising the agent that they had received threats to their person and property. They contacted police but apparently little could be done. Finally, our complainants locked up their apartment and went to stay with relatives. The next day, they found their home broken into and property stolen.

My office took the view that coverage should be extended to this couple for two reasons. Firstly, the interpretation placed on the word "accident" by the courts stated an act or event was an accident if from the perspective of the actors, the results were fortuitous and unintended. Therefore, while our complainants knew there was some risk to their property, there was no certainty a theft would occur. Thus, we felt their loss remained accidental and insured by the policy. Secondly, the risk to their property was explained to the agent at the time the policy was issued. Notwithstanding the risk, a policy was approved. It appeared unfair now for SGI to deny the coverage when the circumstances were known at the time the policy was issued.

SGI accepted our recommendations immediately and settled the claim with this couple.

File No. — 90-26000-30-02

The complaints I investigate seldom reveal clear instances of administrative error. I usually find myself working in areas of administration dimly lit by the light of accepted concepts of fairness. This is so, because complainants are required to avail themselves of all avenues of appeal before we will investigate, except under extraordinary circumstances. Consequently, by the time complaints reach my office, senior management and in most cases appeal boards have examined the circumstances leading to the complaint and separately concluded that the complaint could not be substantiated. Once in a while, however, the system slips.

In this case, the complainant believed Saskatchewan Government Insurance's method of calculating cash settlements was unfair. His car sustained $1,028 damages in a collision with a deer. He could not afford to pay the $500 on his plate insurance, so he asked what the cash settlement would be. His adjuster told him the cash settlement would be $1.50, calculated as follows: total damages ($1,028) less E & H tax ($25) divided by two, less the deductible ($500). He protested, but the adjuster, and SGI management insisted that the calculation was made in accordance with established corporate policy on cash settlements.

After reviewing the relevant legislation, I concluded that SGI's cash settlement formula violated established principles of indemnification. The formula should have been total damages ($1,028) less E & H tax ($25), less the deductible ($500), divided by two, which would result in a cash settlement of $251.50.

I communicated my findings to SGI's President along with my recommendation for a new cash settlement formula. The President agreed with my conclusions and changed the Corporation's cash settlement formula accordingly.

At the time of our last communication with the complainant, he had not decided whether to accept the new cash settlement offer or have his car repaired by a bona fide auto body shop. At least now, he had a reasonable choice.

File No. — 90-26000-30-22

This complaint involved a claim for damage to a 1982 half-ton truck which was vandalized on August 2, 1989. The complainant contacted my office in December, 1989 indicating that Saskatchewan Government Insurance was refusing to honour his claim due to the fact that he had declined to take a lie detector test. The complainant was represented by a solicitor and my office initially declined to investigate the complaint. Approximately two months later, the complainant advised that he had accepted a settlement from SGI in the amount of $2,503.69. He stated however that the settlement represented only 75% of his loss and that SGI had reduced his claim by 25% for reasons unknown to himself. He, therefore, wanted my office to assist him in obtaining the remaining 25% of his claim.

Investigation of his complaint confirmed that both SGI and the local RCMP were highly suspicious of the circumstances surrounding this claim. Three separate statements had been made by the insured to the RCMP and to

SGI and some slight discrepancies were noted. Likewise, the circumstances concerning which items were stolen from the vehicle and which items were damaged were also suspicious, according to both the RCMP and the SGI Special Investigation Unit. As a result, both the RCMP and SGI were convinced that the claimant was being untruthful about something.

However, after all of these investigations were concluded, there was no direct evidence that the insured was making any false claims and, consequently, no charges were laid against him by the RCMP. While SGI remained suspicious about the claim and felt that the man was being untruthful, they also had no concrete evidence in this regard.

I should point out that while this claim for vandalism was filed in October, 1989, the actual payment of 75% of the loss did not occur until April, 1990. This was a delay of 6 months and had been preceded by investigations by both the RCMP and the Special Investigations Branch of SGI. In my view, reducing this claim by 25% without any evidence that this claim was fraudulent or deceitful in any manner, was unreasonable. It was my view that SGI should pay the remaining 25% of the claim.

My office entered into discussions with senior officials of SGI in May, 1990. SGI was receptive to our verbal recommendation and by July 4, 1990, the client confirmed receipt of a cheque for $595 representing the remaining 25% of his claim.

File No. — 90-26000-30-42

In March, 1990 we received a report that SGI had refused settlement of a 1986 claim. The complainant had been advised by SGI that it was too late to pursue this claim.

Our investigation confirmed that our complainant did have a valid claim for a loss that had occurred in September, 1986. He had been operating a truck equipped with a winch when it came into contact with a power line. There was confirmed damage to the six tires on the vehicle and SGI had expressed a willingness to pay for the tires, making proper allowances for wear, which had been measured at that time. The problem was that this complainant had never forwarded any bills to SGI and, subsequently, his claim file had been closed.

At the time of our investigation, the Manager of the local SGI office indicated that they would still be prepared to pay for these tires — provided they had actually been replaced and, subject to the deductible. Consequently, my investigator met with the complainant, to review his bills.

Although the complainant had some difficulty in locating the bills, he eventually did find them. Additionally, some other items had been replaced on this vehicle, as a result of loss, in 1986. My investigator, therefore, encouraged him to meet with officials at SGI to present all of his receipts.

A short time later, our complainant confirmed that he had met with SGI and had now received a net payment of approximately $600. This had already taken into account the wear on his tires, plus deductible. Understandably, this gentleman was most happy with the settlement.

SASKATCHEWAN HOUSING CORPORATION

File No. — 90-47000-10-01

Both locations of the Office of the Ombudsman received numerous calls from disgruntled citizens after the announcement of the cancellation of the Home Improvement Loan Guarantee Program. Obviously, this decision was made by the government and these complaints of "lost opportunity" did not fall within the jurisdiction of this office.

There were a few complaints, however, dealing with the administrative implementation of the decision to cancel the program. I am happy to report that the Saskatchewan Housing Corporation was most co-operative in recognizing the validity of these complaints.

For instance, one homeowner had applied for a Home Improvement Loan in order to build a garage and had obtained loan approval in early February, 1990. On the strength of the loan approval he had paid a $1,000 deposit to the contractor, who in turn had ordered the materials for the project. However, the loan monies had not actually been advanced.

Along with a good number of other individuals, our homeowner heard the broadcast announcing the program cancellation on the evening of March 5, 1990. The next day he telephoned the small town bank branch where the loan had been approved to find out how the announcement affected his loan. Unfortunately, the bank manager was at another branch over which he had responsibility and no one else at this homeowner's branch was able to provide him with any information.

On March 7, 1990, our homeowner was able to contact the bank manager but was advised that the deadline for the advancement of the loan monies had been missed and that, accordingly, he could not qualify for the program.

Our homeowner pursued this matter both with the Bank's Head Office and with officials in the Saskatchewan Housing Corporation. He felt, quite right as it turns out, that he had done everything within his power to qualify for the benefits of the program long before its cancellation.

Unable to resolve this matter on his own, he contacted my office.

Officials in the Corporation advised that the Corporation called a meeting of representatives of Saskatchewan lenders at the same time as the Premier's announcement cancelling the Home Improvement Loan Interest Guarantee Program. After the announcement the participants were provided with a package outlining the mechanics of the program cancellation. Basically, lenders were advised that applications that had been received and were pending as of March 5, 1990 would qualify for the interest guarantee program as long as the loans were finalized (meaning approved, security documentation executed and money advanced) by 5:00 p.m. on March 6, 1990.

Initially, the Corporation's position was that the onus was on the lender to finalize any loans within the specified time. They felt that a short time frame was necessary to prevent abuses. Further, SHC felt that any disgruntled homeowner should look to the lender for amends if the loan was not finalized by the deadline.

Ultimately, SHC revised its position. It was prepared to extend the benefit of the Home Improvement Loan Guarantee Program to individuals in circumstances where, through no fault of either the applicant or the financing institution, the loan could not be completed within the time frames set by SHC. This was good news for our homeowner. In his case, the bank manager was away from the Branch and could not complete the process to finalize our homeowner's loan that had already been approved.

The Corporation is to be commended for its common sense approach to this matter. Understandable, in the midst of the flood of the inquiries that followed the cancellation of the program, some time was required to iron out the implementation details.

File No. — 90-47000-10-10

This complainant took advantage of a Saskatchewan Housing Corporation Program which provides financial assistance for disabled people to modify their homes to accommodate their disability. The program is based upon income and the maximum grant available is $2,000 per household.

This particular application was for the installation of a bath tub lift. The necessary application form was submitted October 1, 1989 and was acknowledged by SHC on November 8, 1989. A letter of commitment was sent by SHC on February 13, 1990 approving the project for the amount of $1,626. The equipment was installed on March 15, 1990 and everything seemed quite satisfactory. Subsequently, however, the clients were informed by SHC on April 25, 1990, that the Corporation had made an error in determining their eligibility and, consequently, a cheque was issued in the amount of $1,236.87. Thus, between the date of the commitment and the date on which the cheque was actually issued, the eligibility of these clients had been reduced by $389.13.

Upon conducting this investigation, it became clear that the facts of the case were not in dispute. The initial error by SHC was simply not detected until after the equipment had been installed in the client's home. The cheque which was issued to the client was in the appropriate amount, given their income. However, the client felt quite strongly that they had been mislead and were not given the proper information until after it was too late to change their plans — the equipment was already installed.

During the course of this investigation, officials at the Saskatchewan Housing Corporation expressed a willingness to review their position, if requested to do so by my office. Given that the clients were of limited financial resources, my office was quite sympathetic and we, subsequently, made a verbal request to the Corporation to review their position.

Approximately two weeks later, the Corporation advised that they were prepared to reimburse these clients for the full amount of the bath tub lift. A cheque was forwarded to the clients in the amount of $389.13, based upon their original commitment. The Corporation recognized that the error was not detected until after the equipment had been installed.

This is another case which was concluded without any formal recommendation being made by my office. Such co-operative attitudes towards resolving problems are indeed appreciated.

SASKATCHEWAN CANCER FOUNDATION

File No. — 89-13020-00-05

In my efforts to be fair, I have to balance the public's demand for both justice and charity. Too much emphasis on one can mean a denial of the other.

The complainant and his wife were in their early eighties, living on a small pension income. According to the complainant, after a long, losing battle with bladder cancer, his wife was advised by a Regina surgeon that she had two treatment options left, a two-stage cystectomy with a 55% chance of survival or radiotherapy with little chance of success. Also, according to the complainant, the doctor clearly stated that a single-stage cystectomy, which would take 7½ hours, would be too risky for someone his wife's age. After consulting their family physician, the complainant and his wife decided to seek the advice of a physician at the Mayo Clinic. The physician at the Mayo Clinic advised an immediate single-stage cystectomy with a 99% chance of success. Assuming that the cost would be paid by medicare, the complainant and his wife readily agreed to the surgery. The surgery was performed and the complainant's wife was released 10 days later.

After returning to Saskatchewan, the complainant received a bill from the Mayo Clinic for $20,000. He then applied to the Saskatchewan Cancer Foundation for reimbursement but the Foundation agreed to pay only $10,000, informing the complainant that that was what the surgery would have cost had it been performed in Saskatchewan.

Not surprisingly, the complainant was shocked, but Foundation policy is clear: "Payment by the Cancer Foundation of normal medical and hospital expenses for cancer consultation or treatment in Quebec or outside Canada requires the prior approval of the Executive Director. Eligible patients who elect to receive cancer treatment in Quebec or outside Canada who do not obtain prior Cancer Foundation approval would have medical and hospital care paid at the approved Saskatchewan rate for such services."

Although the complainant did not get prior Foundation approval, the Foundation wanted to help, so the Foundation, as a special case, agreed to pay for the cost of the initial consultation with the Mayo physician, since the complainant and his wife were referred to him by their family doctor. The Board, however, did not change its decision to pay for the surgery at Saskatchewan rates, basing the decision on the following information: 1) The referral to the Mayo Clinic was made at the patient's request; 2) The referral was for a second opinion and not for definite treatment; and 3) The surgery performed was available in Saskatchewan.

The complainant disagreed with the compensation he received for two reasons. He insisted that the single-stage cystectomy performed at the Mayo Clinic was not available in Saskatchewan and, therefore, the Foundation should pay the full cost of the surgery. Furthermore, he argued,

if the dual-stage cystectomy suggested by the Regina surgeon had been followed his wife would have had to remain in hospital from 15 to 20 days for each stage rather than the 10 days at the Mayo Clinic. At $320 per day that would have cost between $9,600 and $12,800, plus the cost of 2 anaesthetics, 2 surgeries, and the use of the Operating Room and Intensive Care Unit twice. Why, he asked, was this not considered when calculating his compensation?

Our investigation revealed that the single-stage cystectomy performed at the Mayo Clinic was available in Saskatchewan and the complainant's conclusion, that it was not, was the result of a misunderstanding. The complainant thought that because the Regina surgeon had stated that a single-stage cystectomy would be too risky, the operation at the Mayo Clinic, which had a 99% survival rate, must be a different procedure. The Regina surgeon explained to us that the single-stage procedure used at the Mayo Clinic was not different and that it had been his intention all along to proceed with a single-stage cystectomy and change to a two-stage cystectomy only if the complainant's wife's condition during the operation warranted a change. Furthermore, we were informed that the complainant's understanding that the two-stage cystectomy had a 55% survival rate was wrong. The two-stage cystectomy has a 5-year survival rate of 55% which of course is not the same as a 55% survival rate from the operation. We also discovered that in the two years prior to the complainant's wife's surgery, no exceptions had been made to Foundation policy regarding compensation for unapproved out-of-province treatment.

The Foundation did, however, have the discretion to make an exception to policy.

By the time the complainant had contacted the Ombudsman, his wife had died from the cancer, and he was destined to spend his remaining years alone and in poverty because of his small pension income and the payment he must make on a $10,000 loan negotiated to pay the Mayo Clinic.

We were all sympathetic to the complainant's plight, but I could not support his claim that the Foundation's decision was unjust. The Foundation's policy of requiring prior approval for out-of-province treatment is, in my mind, quite reasonable. It gives the Foundation an opportunity to explain to the patient precisely what costs will be covered and to inform the patient of alternatives. Furthermore, while the will exists in Saskatchewan to help anyone who needs special medical treatment, the province cannot responsibly pay for more costly treatment outside Saskatchewan when that treatment is available here. To do so, would increase our already high expenditures on health and thereby effectively diminish the quality of medical service we currently enjoy.

The complainant was naturally disappointed with my decision and intended to pursue the matter further.

SASKATCHEWAN TELECOMMUNICATIONS

File No. — 89-25000-10-11

In the following case, I concluded that Sask Tel had contributed to the complainant's debt to the Corporation through a breach of policy and by failing to notify him that long distance charges were mounting into the hundreds of dollars on an account he had personally guaranteed.

In August, 1988, the complainant was approached by a female acquaintance, whom I shall call Ms. Jones, and asked to sign a personal guarantee for her male friend, whom I shall call Mr. Smith. The complainant knew Mr. Smith was untrustworthy and refused. A few days later, Ms. Jones again approached the complainant, this time asking him to sign a blank Personal Guarantee Form for her sister. The complainant knew the sister and, not suspecting anything was wrong, signed the blank form. Ms. Jones later placed Mr. Smith's name on the form rather than her sister's.

Sask Tel mailed a copy of the guarantee form to the complainant within days of receiving it, but the complainant had gone on holidays and did not see it until the end of September. Upon seeing the form he immediately went to the Sask Tel office in person to revoke the guarantee. Sask Tel apparently said it would look after the matter. The complainant heard nothing more until the end of October when he received a phone bill with his and Mr. Smith's names on it. The complainant phoned Mr. Smith, who by now had moved to Calgary. Mr. Smith told him that the account had been paid, so the complainant thought nothing more of it, assuming that Sask Tel had simply made a mistake. Then, in early November, a Sask Tel representative called the complainant to tell him that Mr. Smith had not paid his phone bill, which now totalled over $700. The complainant explained that he thought the bill had been paid. At this point, the representative advised the complainant to revoke the guarantee in writing. Evidently, the guarantee was not revoked as the complainant had requested at the end of September. In fact, Sask Tel had no record of the complainant's September request, a discrepancy we were not able to resolve. In any event, as soon as Sask Tel received the written revocation notice, it disconnected Mr. Smith's phone.

Mr. Smith did not pay off his account, so the amount owing was transferred to the complainant's account. The complainant, however, was only earning

$500 per month and could not make the payments Sask Tel was demanding. Consequently, his phone was disconnected for non payment.

Since the complainant's signature was on the personal guarantee, there was no question that he was liable for payment of the phone bill. A couple of questions still remained, however. How did Ms. Jones obtain blank copies of the Personal Guarantee Form, and why didn't Sask Tel notify the complainant when Mr. Smith started accumulating hundreds of dollars in long distance charges?

Sask Tel informed me that, according to corporate policy, Ms. Jones should not have been given a blank form, but it could have happened. With regard to the high long distance charges accumulating on Mr. Smith's account, Sask Tel said that it was corporate policy to give the customer the benefit of the doubt and assume the account was not at risk.

I concluded that Sask Tel should accept some responsibility for the complainant's debt. Evidence in our possession corroborated the complainant's statement that he had signed a blank Personal Guarantee Form; therefore, in my view, Sask Tel was partly responsible for the complainant's mistake. Also, Sask Tel should have notified the complainant of the mounting long distance charges, especially considering that they were accumulating on an account that Sask Tel deemed, from the beginning, to be a high risk requiring a personal guarantee.

Sask Tel tacitly accepted some responsibility. All that remained was to decide on a fair settlement of the account. After some negotiation, Sask Tel agreed to settle for $500 as payment in full. By this time, the account, including accumulated interest, had grown to over $800.

I explained to the complainant that Sask Tel could not reasonably be expected to accept full responsibility for a mistake that was primarily his. The Corporation's offer, I suggested, was reasonable and should be accepted. After a few days thought, he agreed and paid the $500.

File No. — 89-25000-10-38

While compromises seldom please all involved, they often are the best solution.

The complainant, who had just opened a business in Regina, signed a directory advertising contract with Sask Tel in January, 1989. Under the terms of the contract the complainant was to pay $350 per month, but the complainant insisted that he had been led to believe that he was to pay $350 per year.

After the complainant signed the contract he heard nothing more from Sask Tel until the 1989 telephone directory was published and he received his first bill. He paid the $350 owing, assuming he would be paid up for the year. When he received another bill the following month, also for $350, he contacted Sask Tel to see if there had been a mistake. Shocked to discover that the $350 was the monthly, not the annual, payment he explained to Sask Tel that he could not possibly afford such a high payment. Sask Tel informed him that the only way he could avoid responsibility for payment was to change the phone number for his business. This did not seem like a reasonable option to him. By the time he called us he was several months in arrears.

Upon investigation we discovered the following. The sales agent for Sask Tel was confident that he had clearly explained to the complainant that the $350 was the monthly payment. This was not very helpful, since there was no good reason to take his word over the complainant's. The complainant had noted that there was nothing on the contract to show that the $350 was a monthly payment. I asked Sask Tel for a response. Sask Tel referred to one of the contractual conditions stated on the back of the contract: ". . . the advertiser will pay the monthly charges set forth on the reverse for the requested advertising. The terms of payment will be monthly and in advance, the first such payment due on the date of publication of the next issue of the directory." The Corporation argued that if the complainant had read the contract he would have realized that the $350 was the monthly payment. Nothing on the complainant's contract, however, identified the $350 as a monthly figure. In fact, the space for, monthly instalment was blank. In my opinion, the placement of the amount owing could easily have led the complainant to assume the $350 was the annual payment.

Having satisfied myself that the complainant's misunderstanding was credible, I had to ask why the complainant did not avoid any further charges by changing his business phone number. The complainant explained that if he were to do that anyone phoning the number listed in the directory would assume that he had gone out of business. He felt trapped. If he kept the number he would be responsible for payments he could not afford, and if he changed the number he would lose business he could not afford to lose.

While I had some sympathy for the complainant's dilemma, I did not think it would be fair for him to benefit from a year's directory advertising at no cost. I asked Sask Tel if under the circumstances it would consider adjusting the monthly payments. The Corporation, which has always been willing to co-operate with my office, suggested a compromise payment

of $2,500 as payment in full. This was still considerably more than the complainant had budgeted for advertising, but he agreed to the compromise anyway, no doubt hoping that the advertising would pay for itself in the long run.

In April, 1989, Direct West, a private corporation, assumed sole responsibility for the publication of directory advertising in Saskatchewan. Since my authority extends only to provincial government departments or agencies, complaints about directory advertising omissions or errors are no longer within my jurisdiction.

SOCIAL SERVICES

File No. — 90-23000-10-80

Ms. G. complained to my office that she was unable to recover funds from the Department of Social Services for cashing a social assistance cheque. The cheque was issued by Social Services to one of their clients and subsequently cancelled when the client reported it as lost. Unbeknown to Ms. G., a second cheque was issued to the client to cover the loss. When Ms. G. attempted to cash the first cheque at the bank, it was not honoured by Social Services as it had been cancelled. She reported the matter to police charging the client with fraud. A conviction resulted but Ms. G. still encountered difficulty recovering her money for cashing the original cheque.

The Department was responsive to our inquiries and although it took a number of months, finally reimbursed Ms. G.

WORKERS' COMPENSATION BOARD

File No. — 88-16030-10-130

In October, 1988, Mr. R. was referred to our office by his solicitor to investigate his complaint involving the Workers' Compensation Board. Two primary issues were identified at that time. The first was the permanent functional impairment being experienced by this worker; the second being the termination of wage loss benefits to Mr. R. as of November 30, 1984.

Upon commencement of this investigation, it became apparent that the client's solicitor and the WCB were engaged in a dispute concerning the establishment of a Medical Review Panel. The WCB had agreed to hold a Panel but the doctors initially selected by Mr. R. had not been available. As a result, the case was seemingly going nowhere. My investigator, therefore, requested the solicitors for Mr. R. to advise WCB in writing of

their position concerning a Medical Review Panel. The solicitor and Mr. R. decided not to go ahead with the Medical Review Panel at that time. Subsequently, Members of the Board ruled against Mr. R. and the case was referred back to our office for completion of the investigation.

The amount of material to be reviewed in this case was immense — 8 volumes. However, the issues in dispute were not numerous — being only those which had been identified initially by the solicitor.

The degree of permanent functional impairment was the subject of numerous medical opinions. Opinions ranged from 30% - 50% and the WCB had assessed 30%. Given the overall medical history of this claimant, my office was prepared to accept the 30% rating as being reasonable, while admitting that there was still some question surrounding this figure.

On the issue of wage loss, my office did not agree with the WCB position of having terminated wage loss effective November 30, 1984. This particular worker had retired from his employment in 1981 and the employer confirmed that his medical condition would not permit him to do his regular work. Additionally, the employer confirmed that there were no alternative duties available for this man. A WCB Rehabilitation Counsellor had attended this meeting with the employer together with the man's union representative. Given this inability to return to his regular employment and his retirement, the WCB had established a wage loss for Mr. R. in 1981.

In this situation, I was most surprised that the WCB had then decided that no wage loss had existed beyond November 30, 1984. Review of the extensive file documentation led me to believe that a Medical Board report may have been misinterpreted. This report had suggested that Mr. R. was fit for work, but appeared more likely that the Medical Board had intended that he was fit for "suitable work". Being fit for suitable work would still allow for the deeming which had been implemented in 1981 and the payment of wage loss to Mr. R. However, WCB had interpreted this report as meaning that Mr. R. was fit for his pre-accident employment, which would mean no wage loss. A rather contradictory situation over three years after the man had retired!

I presented my report concerning Mr. R. to the WCB in March of 1990. Within less than one month the Board had agreed to accept my recommendation concurring that the Medical Board report may have been misread.

Approximately two weeks later, the WCB issued a retroactive cheque to Mr. R. in the amount of $45,980.95. Additionally, Mr. R. would continue to have entitlement to wage loss benefits at the rate of $868.41 per month. This wage loss would be subject to indexing until Mr. R. reached the age of 65 (December, 1991).

Mr. R. was very pleased with this retroactive entitlement and felt somehow vindicated, for the many years he had struggled with the WCB on this issue. My office was pleased that the recommendation was not only accepted, but it was also responded to very promptly by the Board Members.

PART III

STATISTICS

PART III

STATISTICS

MUNICIPAL DISTRIBUTION OF COMPLAINTS AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1990

Alvena	1	Fleming	1
Archerwill	1	Foam Lake	1
Arcola	1	Frobisher	2
Asquith	1	Fort Qu'Appelle	7
Assiniboia	1	Glenbain	1
Balcarres	4	Glenavon	2
Battleford	2	Glidden	1
Beauval	1	Goodsoil	1
Biggar	1	Gravelbourg	1
Bjorkdale	2	Grenfell	2
Blaine Lake	1	Gull Lake	1
Bredenbury	1	Hague	2
Brownlee	1	Halbrite	1
Buchanan	1	Hanley	1
Buffalo Narrows	2	Henribourg	1
Burstall	1	Hudson Bay	6
Calder	1	Humboldt	3
Canora	8	Ile-a-la-Crosse	3
Carnduff	1	Indian Head	5
Caron	1	Jan Lake	1
Carrot River	3	Jansen	1
Chitek Lake	1	Kamsack	3
Choiceland	1	Kelliher	2
Churchbridge	4	Kelvington	1
Codette	1	Kennedy	1
Conquest	3	Kindersley	2
Creighton	1	Kinistino	2
Cumberland House	3	Kipling	1
Cut Knife	1	La Loche	3
Dalmeny	1	La Ronge	6
Delisle	1	Lacadena	1
Denare Beach	1	Lafleche	1
Denzil	1	Lake Lenore	1
Domremy	2	Langham	2
Donavon	1	Lanigan	2
Endeavour	1	Lebret	3
Esterhazy	1	Lemberg	1
Estevan	9		

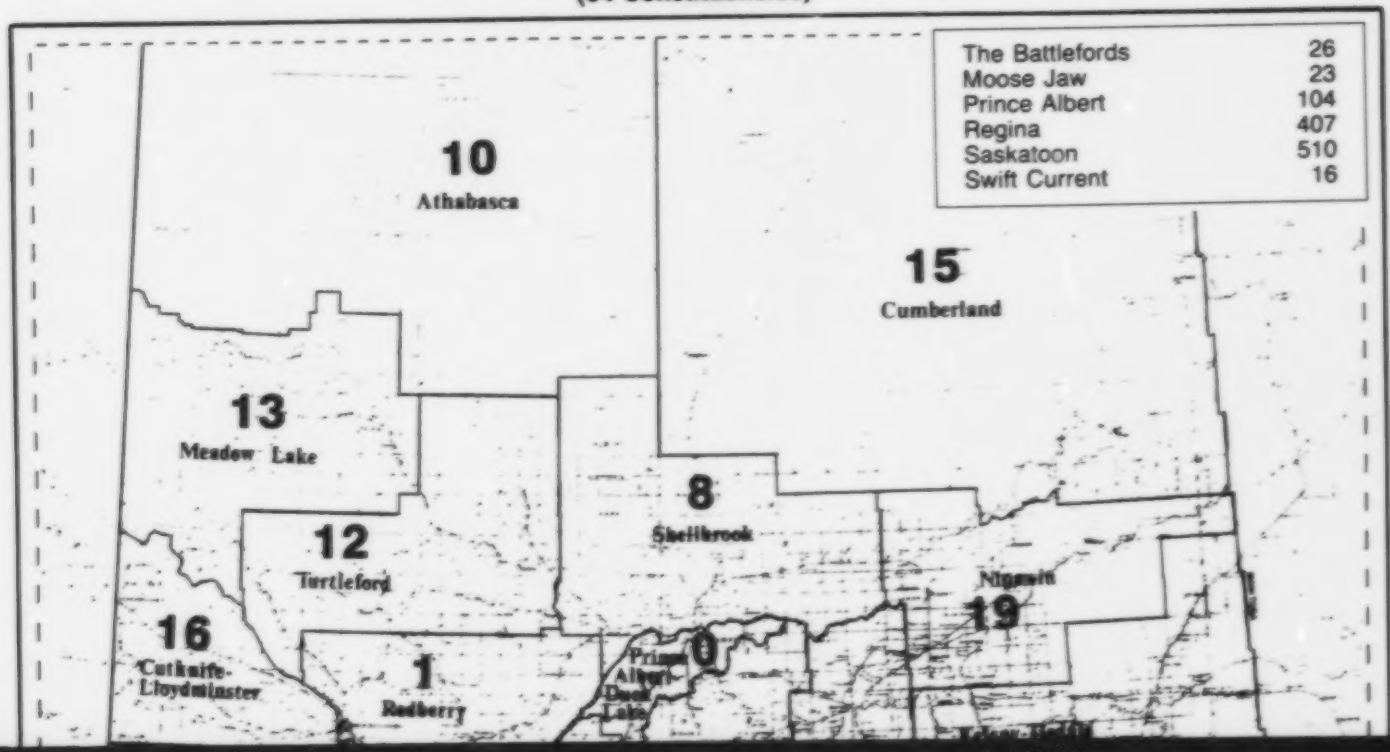
Livelong	1
Lloydminster	9
Loon Lake	1
Love	2
Luseland	2
Macklin	1
Madison	1
Maidstone	2
Maple Creek	3
Marsden	1
McLean	1
Meadow Lake	9
Meath Park	1
Medstead	2
Melfort	5
Melville	6
Moose Jaw	23
Moosomin	5
Mossbank	1
Neilburg	2
Nipawin	10
North Battleford	24
Oxbow	1
Parkman	1
Paynton	1
Pelican Narrows	1
Pennant	1
Pense	1
Pilot Butte	2
Ponteix	1
Preeceville	2
Prince Albert	104
Qu'Appelle	2
Raymore	1
Redvers	1
Regina	407
Regina Beach	4
Riceton	1
Richardson	1
Richmound	1
Rocanville	1
Rosetown	1
Rosthern	2
St. Brieux	1
St. Walburg	2
Sandy Bay	1
Saskatoon	510
Shaunavon	2
Shell Lake	1
Silton	1
Smeaton	3
Southey	1
Sovereign	1
Spiritwood	6
Springside	2
Spruce Lake	1
Stockholm	3
Strongfield	1
Success	1
Swift Current	16
Theodore	2
Tisdale	3
Torquay	1
Turnor Lake	1
Unity	2
Vanscoy	2
Wadena	1
Waskesiu	2
Watrous	3
Wawota	1
Webb	2
Weldon	2
Weyakwin	1
Weyburn	11
White City	2
White Fox	3
Wilcox	1
Wilkie	2
Willowbrook	2
Wynyard	2
Yorkton	20

OUT OF PROVINCE

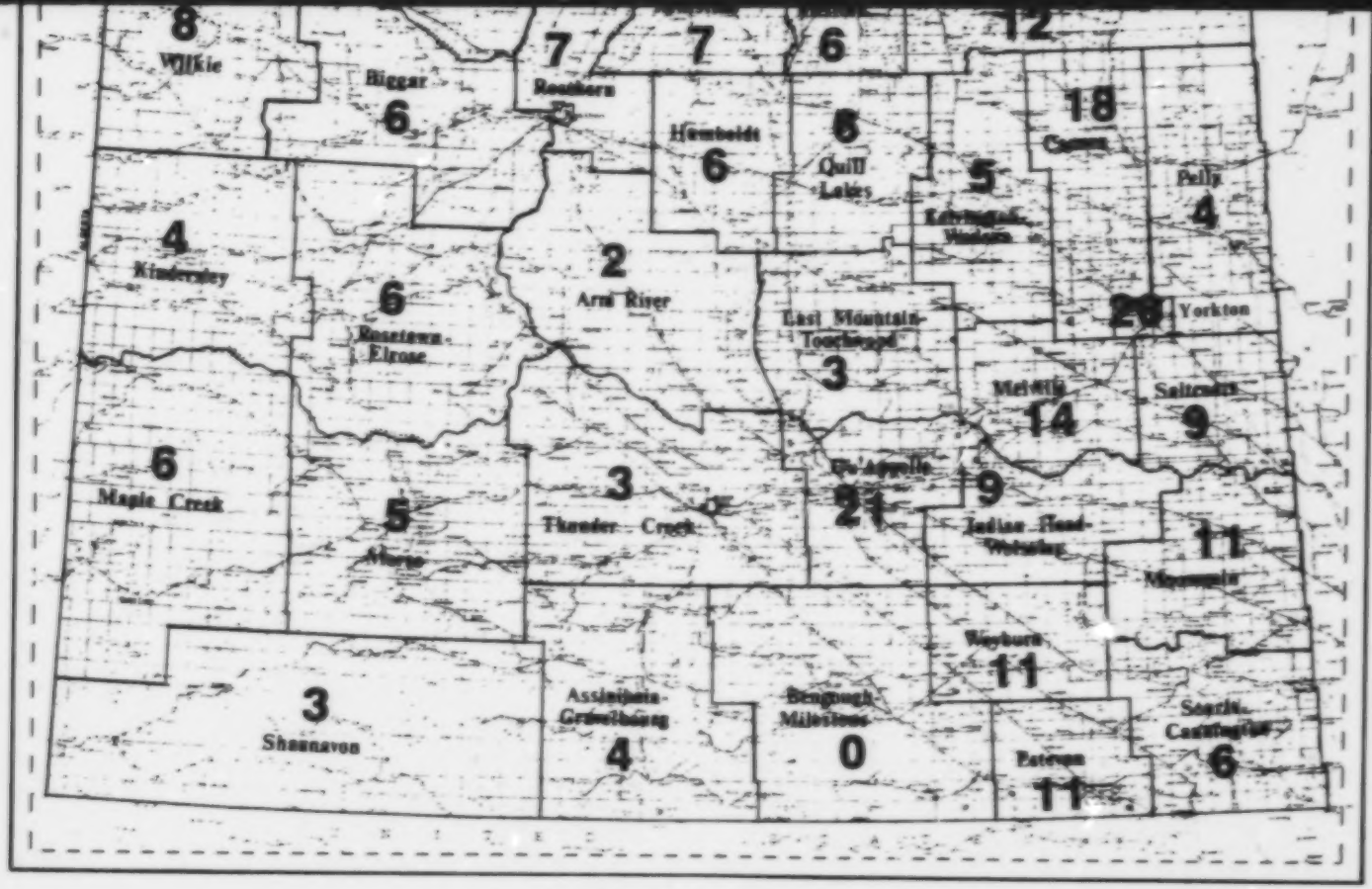
Alberta	15
British Columbia	12
Manitoba	7
Ontario	4

GEOGRAPHIC DISTRIBUTION OF COMPLAINTS AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1990

PROVINCIAL CONSTITUENCIES
The Representation Act 1981
(64 Constituencies)



The Battlefords	26
Moose Jaw	23
Prince Albert	104
Regina	407
Saskatoon	510
Swift Current	16


8
Wilkie
Biggar
6
7
Rosthern
7
6
12
Humboldt
6
6
Quill Lakes
5
18
Canora
Preeceville
4
4
Kindersley
2
Arm River
6
Rosetown
Elrose
Last Mountain-Touchwood
3
Yorkton
Melville
14
Saltcoats
9
6
Maple Creek
3
Thunder Creek
5
Morse
Qu'Appelle
21
9
Indian Head-Wolseley
11
Moosomin
Weyburn
11
3
Shaunavon
Assiniboia-Gravelbourg
4
Bengough-Milestone
0
Estevan
11
Souris-Cannington
6

COMPLAINTS RECEIVED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1990

Department — Agency Board and Commission	Department Code No.	Totals
Agriculture		
— General	1000-10	5
Agricultural Credit Corporation of Saskatchewan	1060-00	3
Saskatchewan Water Corporation	1500-00	2
Justice		
— General	2000-10	8
— Court Services	2000-20	11
— Corrections	2000-30	278
— Maintenance Enforcement Office	2000-40	21
Public Trustee	2030-00	6
Criminal Injuries Compensation Board	2040-00	9
Saskatchewan Police Commission	2070-00	3
Saskatchewan Human Rights Commission	2100-00	6
Office of the Rentalsman	2200-00	11
Rent Appeal Commission	2400-00	6
Saskatchewan Securities Commission	2600-00	3
Consumer and Commercial Affairs		
— General	3000-10	4
Saskatchewan Gaming Commission	3030-00	1
Education		
— General	7000-10	47
Teachers' Superannuation Board	7030-00	33
Environment and Public Safety		
— General	8000-10	3
Water Appeal Board	8010-00	4
Finance		
— General	11000-10	5
— Public Employees' Benefits Agency	11000-40	5
— Municipal Employees' Agency	11000-50	1
Saskatchewan Property Management Corporation		
— General	12000-10	2
Health		
— General	13000-10	14
— Mental Health	13000-20	1
— Saskatchewan Hospital Services Plan	13000-60	1

Department — Agency Board and Commission	Department Code No.	Totals
Saskatchewan Alcohol and Drug Abuse Commission	13010-00	1
Saskatchewan Medical Care Insurance Commission	13020-00	2
South Saskatchewan Hospital Centre	13040-00	3
Highways and Transportation — General	14000-10	3
Highway Traffic Board	14010-00	2
Human Resources, Labour and Employment — General	16000-10	17
— Labour Services Division	16000-40	5
— Occupational Health and Safety	16000-50	2
Labour Relations Board	16010-00	4
Workers' Compensation Board	16030-00	125
Rural Development — General	18000-10	4
Saskatchewan Crop Insurance Corporation	18030-00	12
Lands	18300-00	2
Saskatchewan Municipal Board	19060-00	2
Parks, Recreation and Culture — General	22000-10	12
Social Services — General	23000-00	1
— Income Security (FIP & SAP)	23000-10	348
— Family Services/Foster Care	23000-20	64
— Youth Offenders Program	23000-30	6
Community Living	23010-00	1
Social Services Appeal Board (Provincial)	23020-00	10
Public Service Commission	24000-10	4
Saskatchewan Telecommunications	25000-10	45
Saskatchewan Government Insurance — General	26000-10	19
— Motor Licensing	26000-20	24
— Claims	26000-30	123
Saskatchewan Power Corporation — General	27000-10	67

Department — Agency Board and Commission	Department Code No.	Totals
Provincial Secretary — General	31000-10	1
Beef Stabilization Board — General	39000-10	1
Culture, Multiculturalism and Recreation — General	43000-10	1
Saskatchewan Transportation Corporation — General	44000-10	1
Liquor Board — General	45000-10	2
Liquor Licensing Commission — General	45010-10	1
Saskatchewan Economic Development Corporation — General	46000-10	3
Saskatchewan Housing Corporation — General	47000-10	26
Regina Housing Authority	47010-00	4
Saskatoon Housing Authority	47020-00	1
Saskatchewan Legal Aid Commission — General	50000-10	15
SIAST — General	52000-10	8
Saskatchewan Energy Corporation — General	53000-10	14
Agricultural Development Corporation of Saskatchewan — General	54000-10	1
Saskatchewan Forest Products Corporation — General	55000-10	1
		1,451

TOTAL COMPLAINTS RECEIVED — 1990

	Against Saskatchewan Departments and Agencies	Not Against Saskatchewan Departments and Agencies	Total
January	87	169	256
February	134	112	246
March	148	180	328
April	114	169	283
May	101	167	268
June	102	146	248
July	130	162	292
August	117	169	286
September	106	140	246
October	123	197	320
November	140	214	354
December	149	164	313
	1,451	1,989	3,440

COMPLAINTS OTHER THAN AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES
January 1 to December 31, 1990

Category	Number	%
Consumer	595	30
Federal	358	18
Local Government	115	6
Professional	67	3
Private	286	14
Courts/Legal	133	7
Family	31	2
Medical	41	2
Other	363	18
	1,989	100

SUMMARY OF COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1990

	Resolved	Rectified	Not Rectified	Not Substantiated	No Jurisdiction	Discontinued	Total
1983	—	—	—	1	—	—	1
1984	—	—	—	—	—	1	1
1985	—	2	2	—	—	3	7
1986	—	2	4	1	—	3	10
1987	2	4	3	6	1	2	18
1988	1	9	7	14	—	2	33
1989	17	25	9	43	—	25	119
1990	259	17	6	87	42	844	1,255
	279	59	31	152	43	880	1,444

SUMMARY OF COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1989

	Resolved	Rectified	Not Rectified	Not Substantiated	No Jurisdiction	Discontinued	Total
1977	—	—	—	—	—	1	1
1978	—	—	—	—	—	1	1
1979	—	—	—	—	—	2	2
1984	—	—	—	—	—	3	3
1985	—	1	—	2	—	5	8
1986	2	4	—	6	—	5	17
1987	—	13	6	10	—	4	33
1988	6	17	4	53	—	5	85
1989	274	14	—	136	40	898	1,362
	282	49	10	207	40	924	1,512

SUMMARY OF COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1988

	Resolved	Rectified	Not Rectified	Not Substantiated	No Jurisdiction	Discontinued	Total
1975	—	—	—	—	—	—	—
1979	—	—	—	—	—	1	1
1980	—	—	1	—	—	—	1
1981	—	1	1	—	—	—	2
1982	—	—	1	—	—	—	1
1983	—	—	1	—	—	1	2
1984	—	5	4	3	—	6	18
1985	1	8	6	4	1	6	26
1986	4	4	9	13	—	9	39
1987	7	42	13	57	—	7	126
1988	272	32	18	172	17	872	1,383
	284	92	53	249	18	902	1,599

COMPLAINTS CLOSED AGAINST SASKATCHEWAN DEPARTMENTS AND AGENCIES — 1990

Department — Agency Board and Commission	Department Code No.	Resolved	Rectified	Not Substan.	No Juris.	Discont.	Not Rectified	Tr'sub
Agriculture								
— General	1000-10	1	—	—	—	3	—	4
Saskatchewan Crop Insurance Corporation*	1050-00	—	1	1	—	—	—	2
Agricultural Credit Corporation of Saskatchewan	1060-00	—	—	1	—	2	—	3
Saskatchewan Water Corporation*	1500-00	1	—	—	—	—	—	1
Justice								
— General	2000-10	—	—	2	1	6	—	9
— Court Services	2000-20	2	1	1	1	5	—	10
— Corrections	2000-30	47	11	41	4	165	2	270
— Maintenance Enforcement Office	2000-40	4	—	1	3	11	—	19
Public Trustee	2030-00	1	—	1	—	2	—	4
Criminal Injuries Compensation Board	2040-00	—	—	3	—	4	—	7
Saskatchewan Police Commission	2070-00	1	—	—	1	1	—	3
Saskatchewan Human Rights Commission	2100-00	1	—	—	2	1	—	4
Office of the Rentalsman	2200-00	3	—	—	1	5	—	9
Rent Appeal Commission*	2400-00	—	—	—	—	5	—	5
Saskatchewan Securities Commission	2600-00	—	—	1	—	3	—	4
Consumer and Commercial Affairs								
— General	3000-10	1	—	—	—	2	—	3
Rent Appeal Commission*	3000-60	—	—	—	—	—	2	2
Saskatchewan Gaming Commission	3030-00	—	—	—	—	1	—	1
Education								
— General	7000-10	9	4	4	2	24	—	43

— SIAST	7000-20	1	—	1	—	1	—	3
Teacher's Superannuation Board	7030-00	—	1	1	—	1	—	3
Environment and Public Safety								
— General	8000-10	—	—	—	—	3	—	3
Saskatchewan Water Appeal Board*	8010-00	—	—	—	—	1	2	3
Saskatchewan Water Corporation*	8030-00	—	—	1	—	—	—	1
Saskatchewan Water Appeal Board*	8040-00	—	—	—	—	1	—	1
Saskatchewan Water Corporation†	8200-00	—	—	—	—	—	1	1
Finance								
— General	11000-10	2	—	3	—	—	—	5
— Public Employees' Benefits Agency	11000-40	1	1	1	1	1	—	5
— Municipal Employees' Superannuation Commission	11000-50	—	—	—	1	—	—	1
Saskatchewan Property Management Corporation								
— General	12000-10	—	—	—	—	2	—	2
Health								
— General	13000-10	3	—	6	3	3	—	15
— Mental Health	13000-20	—	—	—	—	1	—	1
Saskatchewan Medical Care Insurance Commission	13020-00	—	—	3	—	1	—	4
South Saskatchewan Hospital Centre	13040-00	—	1	—	—	2	—	3
Highways and Transportation								
— General	14000-10	—	—	1	—	4	—	5
— Highway Traffic Board	14010-00	—	—	—	1	1	—	2
Human Resources, Labour and Employment								
— General	16000-10	1	—	2	—	13	—	16
— Labour Standards	16000-40	1	—	3	—	1	—	5
— Occupational Health	16000-50	—	—	—	—	2	—	2
Labour Relations Board	16010-00	—	—	—	—	3	1	4
Workers' Compensation Board*	16030-00	31	—	9	—	1	—	41

Department — Agency Board and Commission	Department Code No.	Resolved	Rectified	Not Substan.	No Juris.	Discont.	Not Rectified	Totals
Workers' Compensation Board*	16030-10	—	4	5	—	70	6	85
Liquor Licensing Commission	16050-00	—	—	—	—	—	1	1
Rural Development — General	18000-10	1	—	—	2	1	—	4
Saskatchewan Crop Insurance Corporation*	18030-00	1	1	3	—	3	1	9
Saskatchewan Assessment Appeal Board	18060-00	—	—	—	1	—	—	1
Saskatchewan Housing Corporation*	18100-00	—	1	—	—	1	—	2
Municipal Housing Authority	18200-00	—	1	—	—	—	—	1
Lands Branch	18300-00	—	—	—	—	2	—	2
Saskatchewan Housing Corporation*	19050-00	—	1	—	—	—	—	1
Saskatchewan Municipal Board	19060-00	—	—	2	—	2	—	4
Parks, Recreation and Culture — General	22000-10	2	—	3	3	2	—	10
New Careers Corporation	22040-00	—	—	2	—	—	—	2
Social Services — General	23000-10	69	3	6	3	251	1	333
— Community and Personal Services	23000-20	14	1	2	1	36	1	55
— Young Offenders Program	23000-30	1	—	1	—	3	—	5
— Regional Services Division	23000-40	7	8	8	—	8	4	35
Social Services Appeal Board (Provincial)	23020-00	1	3	7	—	4	4	19
Saskatchewan Legal Aid Commission*	23030-00	—	—	—	—	1	—	1
Public Service Commission — General	24000-10	—	—	1	—	3	—	4
Saskatchewan Telecommunications — General	25000-10	12	4	1	2	25	1	45
Saskatchewan Government Insurance — General	26000-10	—	1	3	1	15	—	20

— Motor Licensing	26000-20	6	2	3	1	15	—	27
— Claims	26000-30	25	7	11	1	73	4	121
Saskatchewan Power Corporation								
— General	27000-10	10	1	1	3	47	—	62
Provincial Secretary	31000-10	—	—	—	—	1	—	1
Culture, Multiculturalism and Recreation								
— General	43000-10	—	—	—	1	—	—	1
Saskatchewan Transportation Corporation								
— General	44000-10	—	—	—	—	1	—	1
Liquor Board								
— General	45000-10	—	—	—	—	1	—	1
SEDCO								
— General	46000-10	1	—	—	—	2	—	3
Saskatchewan Housing Corporation*								
— General	47000-10	4	1	5	1	10	—	21
Regina Housing Authority	47010-00	—	—	—	—	2	—	2
Saskatoon Housing Authority	47020-00	—	—	—	—	1	—	1
Saskatchewan Legal Aid Commission*								
— General	50000-10	4	—	—	2	7	—	13
SIAST								
— General	52000-10	2	—	—	—	4	—	6
Saskatchewan Energy								
— General	53000-10	9	—	—	—	5	—	14
Agricultural Development Corporation of Saskatchewan								
— General	54000-10	—	—	—	—	1	—	1
Saskatchewan Forest Corporation								
— General	55000-10	—	—	—	—	1	—	1
TOTALS		260	59	151	43	880	31	1,444

*Please note that some agencies may appear more than once due to the Government re-organization which occurred.

PART IV

THE OMBUDSMAN ACT

CHAPTER O-4.

An Act to provide for the appointment of a Person to Investigate Administrative decisions or acts of Departments of the Government and certain other Organizations and to define the Person's duties, functions and powers.

Short title

1. This Act may be cited as *The Ombudsman Act*.

Interpretation

2. In this Act:

"agency of the government"

(*a*) "agency of the government" means any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which:

(*i*) are appointed by an Act or by an order of the Lieutenant Governor in Council; or

(*ii*) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;

"department"

(*b*) "department" means a department or branch of the executive government of the province;

"minister"

(*c*) "minister" means a member of the Executive Council. 1972, c. 87, s. 2.

Appointment

3.—(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigation to be called an Ombudsman.

(2) The person appointed as Ombudsman shall be a Canadian citizen and, subject to section 5, he shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

(3) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for a term of five years from the date of his appointment and may be reappointed for one additional term of five years.

(4) The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province. 1972, c. 87, s. 3.

Removal or suspension

4. The Lieutenant Governor in Council on a resolution of the Assembly shall remove the Ombudsman from his office or suspend him according to the resolution. 1972, c. 87, s. 4.

Suspension when Legislature not in session

5.—(1) When the Legislature is not in session the Lieutenant Governor in Council may suspend the Ombudsman for disability, neglect of duty, misconduct or bankruptcy proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next ensuing session of the Legislature.

(2) Where the office of Ombudsman is vacant or the Ombudsman is suspended under subsection (1), the Lieutenant Governor in Council shall appoint an acting Ombudsman to hold office until a person is appointed as Ombudsman under section 3 or the suspension has been dealt with by the Assembly. 1972, c. 87, s. 5.

Salary

6.—(1) The Ombudsman shall be paid:

(*a*) a salary equal to the salary fixed from time to time by the Lieutenant Governor in Council pursuant to subsection 5(1) of *The Provincial Court Act* to be paid to a judge of the Provincial Court of Saskatchewan; and

(*b*) an allowance for travelling and other expenses incurred by him in the performance of his duties that may be approved by the Lieutenant Governor in Council.

(2) Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose. 1972, c. 87, s. 6; 1973-74, c. 74, s. 1; 1974-75, c. 32, ss. 2, 3; 1976, c. 41, s. 1; 1976-77, c. 54, s. 1; 1978, c. 40, s. 1; 1979, c. 49, s. 2.

Application of certain Acts to Ombudsman and staff

7.—(1) The Ombudsman is not subject to *The Public Service Act*, except section 54 thereof, and he is subject to *The Public Service Superannuation Act*.

(2) The staff for the Ombudsman shall consist of such persons or positions as are required for the proper administration of this Act.

(3) *The Public Service Act* and *The Public Service Superannuation Act* apply to the members of the staff of the Ombudsman. 1972, c. 87, s. 7.

Oath of office

8. The Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

OATH OF OFFICE

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of Ombudsman and that I will not, except as provided in *The Ombudsman Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 8.

Same

9. Every member of the staff of the Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Ombudsman the following oath:

OATH OF OFFICE

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Ombudsman and that I will not, except as provided in *The Ombudsman Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 9.

Secrecy

10.—(1) The Ombudsman and every member of his staff shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his powers and the carrying out of his duties and functions under this Act.

(2) Notwithstanding subsection (1) or any oath taken under this Act, the Ombudsman may disclose in a report made by him under this Act any matter that he considers necessary to disclose in order to establish grounds for his conclusions and recommendations. 1972, c. 87, s. 10.

Delegation of powers

11.—(1) With the prior approval of the Lieutenant Governor in Council the Ombudsman may, by writing under his hand, delegate to any member of his staff any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

(2) A delegation may be made to a specified person of the staff of the Ombudsman or to the holder for the time being of a specified office or to the holders of offices of a specified class of the staff.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit and may be made either generally or in relation to a particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and where the Ombudsman who made the delegation ceases to hold office the delegation shall continue to have effect as if it was made by his successor.

(6) Where the Ombudsman has delegated a power under this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his authority to exercise the power. 1972, c. 87, s. 11.

Powers, functions and duties

12.—(1) It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

(2) The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1).

(3) A committee of the Assembly may at any time refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration and the Ombudsman shall:

(*a*) subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and

(*b*) make such report to the committee as he thinks fit.

(4) The Lieutenant Governor in Council may at any time refer to the Ombudsman for investigation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof and the Ombudsman shall:

(*a*) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and

(*b*) make such report to the Lieutenant Governor in Council as he thinks fit. 1972, c. 87, s. 12.

Complaints to Ombudsman

13.—(1) Every complaint to the Ombudsman shall be made by a person who is, or who before the date of the event that gave rise to the complaint was, a resident of Saskatchewan.

(2) A complaint under this Act may be made in respect of any matter that arises after this Act comes into force or that arose within the twelve months immediately preceding the coming into force of this Act.

(3) No complaint shall be investigated by the Ombudsman unless the complaint was made within twelve months after the event that gave rise to the complaint occurred.

(4) Notwithstanding subsection (3), if the Ombudsman for special reasons to be certified by him concludes that a complaint should be investigated, he may investigate the complaint regardless of when the event that gave rise to the complaint ocurred. 1972, c. 87, s. 13.

Ombudsman not restricted by provisions of other Acts

14. The Ombudsman may exercise his powers and shall carry out his duties and functions under this Act notwithstanding anything in any other Act which provides:

(*a*) that any decision, recommendation, act or omission that he is investigating is final or that no appeal lies in respect thereof; or

(*b*) that no proceeding or decision of the department, agency of the government, officer, employee or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question. 1972, c. 87, s. 14.

Restrictions on jurisdiction

15.—(1) Nothing in this Act authorizes the Ombudsman to investigate:

(*a*) any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant Governor in Council, the Executive Council or a member or committee of the Executive Council;

(*b*) any decision, order or omission of a court, a judge of a court, a referee or local master of a court, a magistrate or a

justice of the peace made or given in any action or proceeding in the court or before the judge, referee, local master, magistrate or justice of the peace;

(*c*) any award, decision, recommendation or omission of an arbitrator, or board of arbitrators, established by or under any Act;

(*d*) any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;

(*e*) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings;

(*f*) any decision, recommendation, act or omission of a deputy minister, an acting deputy minister, associate deputy minister or assistant deputy minister when acting as such or of any person who by virtue of his appointment or actual employment is expressly or by necessary implication directly responsible to a minister;

(*g*) any decision, recommendation, act, order or omission of any department or agency of the government, or an officer, employee or person, in relation to any matter arising between the department, agency, officer, employee or person, and the government of another province or the Government of Canada or a municipality or school board.

(2) Where a dispute arises as to whether a person mentioned in clause (*f*) of subsection (1) is a person who by virtue of his appointment or actual employment is expressly or by necessary implication responsible to a minister, the dispute shall be referred to and be determined by the Attorney General and the decision of the Attorney General is final. 1972, c. 87, s. 15.

Question of jurisdiction to investigate

16.—(1) Where any question arises respecting the jurisdiction of the Ombudsman to investigate any case or class of cases under this Act, he may apply to the Court of Queen's Bench or a judge of the

court sitting in chambers for a declaratory order determining the question.

(2) Notice of an application under subsection (1) shall be served upon the Attorney General not less than fifteen days before the date on which the application is to be heard. 1972, c. 87, s. 16.

Letters to or from Ombudsman privileged

17. Notwithstanding any Act, where a letter written by a person in custody on a charge for an offence or after conviction for an offence, or by an inmate of a hospital, mental hospital, facility or institution operated by or under the direction of the government, or by any person in custody of another person for any reason, is addressed to the Ombudsman, it shall be forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer of the letter is detained or in which he is an inmate or by the person having custody of the writer. 1972, c. 87, s. 17.

Refusal to investigate

18.—(1) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate a complaint if

(*a*) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;

(*b*) in his opinion it is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(*c*) in his opinion upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued;

(*d*) in his opinion the circumstances of the case do not warrant investigation;

(*e*) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(*f*) during the course of an investigation it appears to him

(*i*) that under the law or existing administrative practices the complainant has adequate remedy or right of appeal, other than a petition to the Legislature, whether or not the complainant has availed himself of it; or

(*ii*) that, having regard to all the circumstances of the case, further investigation is unnecessary.

(2) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 18.

Notice of termination of investigation

19. Where the Ombudsman decides not to investigate, or to cease to investigate, a complaint, he shall inform the complainant of his decision and may, if he thinks fit, state his reasons therefor. 1972, c. 87, s. 19.

Notice of investigation

20.—(1) Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation.

(2) The notice shall be in writing and shall set forth the nature of the complaint, if any, received by the Ombudsman.

(3) The Ombudsman may in his discretion at any time during or after an investigation consult with the minister who is concerned in the matter of the investigation.

(4) On the request of the minister in charge of the department or agency of the government or in any case where an investigation relates to any recommendation made to a minister, the Ombudsman shall consult the minister after making the investigation and before forming a final opinion of any matter referred to in subsections (1) and (2) of section 24.

(5) Where, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any department or agency of the government, he shall refer the matter to the minister in charge of the department or agency of the government, as the case may require. 1972, c. 87, s. 20.

Conduct of investigation

21.—(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hold hearings and hear or obtain information from any person he thinks fit and may make such inquiries as he thinks necessary.

(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman but if at any time it appears to the Ombudsman that there are sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government or person, he shall give to that department, agency or person an opportunity to make representations in respect of the matter and the department, agency or person may make representations in respect of the matter by counsel. 1972, c. 87, s. 21.

Ombudsman may require persons to furnish information and documents

22.—(1) Subject to section 23, the Ombudsman may require any person, other than a minister or a person mentioned in clause *(f)* of subsection (1) of section 15, who in his opinion is able to give any information relating to any matter being investigated by him

(*a*) to furnish information to him; and

(*b*) to produce any document or thing that, in his opinion, relates to the matter being investigated and that may be in the possession or under the control of that person,

whether or not that person is an officer, employee or member of the department or agency of the government and whether or not the document, paper or thing is in the custody or under the control of a department or agency of the government.

(2) The Ombudsman may summon before him and examine under oath

(*a*) any person, other than a minister or a person mentioned in clause *(f)* of section 15, who is an officer, employee or member of any department or agency of the government and who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

(*b*) any complainant; and

(*c*) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him,

and for that purpose may administer an oath.

(3) Every examination by the Ombudsman under subsection (2) shall be deemed a judicial proceeding for the purposes of section 120 of the *Criminal Code*.

(4) Subject to section 23

(*a*) a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman;

(*b*) no provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall apply in respect of an investigation by the Ombudsman and no person who is required by the Ombudsman to furnish any information or to produce any document, paper or thing or who is summoned by the

Ombudsman to give evidence, shall refuse to furnish the information, produce the document, paper or thing or to answer questions on the ground of such a provision.

(5) Except on the trial of a person for perjury, no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Ombudsman is admissible in evidence against any person in any court, at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(6) No person shall be prosecuted for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section. 1972, c. 87, s. 22.

Disclosure prejudicial

23. Where the Attorney General certifies to the Ombudsman that the giving of any information, the answering of any question or the production of any document, paper or writing might involve the disclosure of

(*a*) the deliberations of the Executive Council; or

(*b*) proceedings of the Executive Council or a committee of the Executive Council relating to matters of a secret or confidential nature the disclosure of which would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document, paper or writing to be produced, as the case may be, but shall report the receipt of the certificate in his next annual report. 1972, c. 87, s. 23.

Report on investigation

24.—(1) Where, after making an investigation under this Act, the Ombudsman is of the opinion

(*a*) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been

(*i*) contrary to law,

(*ii*) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,

(*iii*) based in whole or in part on a mistake of law or fact, or

(*iv*) wrong,

(*b*) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised

(*i*) for an improper purpose,

(*ii*) on irrelevant grounds, or

(*iii*) on the taking into account of irrelevant considerations; or

(*c*) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

(*a*) that a matter should be referred to the appropriate authority for further consideration;

(*b*) that an omission should be rectified;

(*c*) that a decision should be cancelled or varied;

(*d*) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;

(*e*) that any law on which a decision, recommendation, act or omission was based should be reconsidered;

(*f*) that reasons should be given for any decision, recommendation, act or omission; or

(*g*) that any other steps should be taken.

(3) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 24.

Notice of proposed steps

25.—(1) Where the Ombudsman makes a recommendation under section 24, he may request the department or agency of the government to notify him within a specified time of the steps that it has taken or proposed to take to give effect to his recommendations.

(2) If, within a reasonable time after a request respecting recommendations is made under this section, no action is taken that seems to the Ombudsman to be adequate or appropriate the Ombudsman after considering the comments, if any, made by or on behalf of the department or agency of the government affected may submit a report of the matter, including a copy of the report containing the recommendation, to the Lieutenant Governor in Council and may thereafter mention the report in his next annual report to the Assembly. 1972, c. 87, s. 25.

Review of Ombudsman's decision

26.—(1) Where the Ombudsman makes a recommendation under section 24 and no action that seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any event inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation. 1972, c. 87, s. 26.

Proceedings not subject to review

27. No proceeding of the Ombudsman is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be challenged, reviewed, quashed or called into question in any court. 1972, c. 87, s. 27.

Proceedings against Ombudsman prohibited

28.—(1) No proceedings lie against the Ombudsman or against any member of his staff for anything he may do, report or say in the course of the exercise or performance, or intended exercise or performance, of his powers, duties and functions under this Act unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any member of his staff shall be called in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise or performance of his powers, duties and functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the court relating to an investigation by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court.

(4) For the purposes of *The Libel and Slander Act*, any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report thereon in a newspaper or a broadcast shall be deemed to be privileged. 1972, c. 87, s. 28; 1976-77, c. 81, s. 5.

Entry of premises

29.—(1) For the purposes of this Act, the Ombudsman may at any time enter upon the premises occupied by any department or agency of the government and, subject to section 12, carry out therein any investigation within his jurisdiction.

(2) Before entering upon any premises under subsection (1), the Ombudsman shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises of his intention to conduct an investigation. 1972, c. 87, s. 29.

Report by Ombudsman

30.—(1) The Ombudsman shall make and submit to the Speaker of the Assembly an annual report respecting the exercise of his powers and the performance of his duties and functions under this Act, which shall be laid before the Assembly within fifteen days from the commencement of the session next following the end of the year for which the report is made.

(2) The Ombudsman may from time to time in the public interest or in the interest of any person, department or agency of the government publish reports relating:

(*a*) generally to the exercise of his powers and the performance of his duties and functions under this Act; or

(*b*) to any particular case investigated by him;

whether or not the matters to be dealt with in any such report have been the subject of a report to the Assembly. 1972, c. 87, s. 30.

Rules for guidance

31.—(1) The Assembly may:

(*a*) of its own volition; or

(*b*) upon the recommendation of the Lieutenant Governor in Council;

make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties and functions.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of the duties and functions imposed by this Act. 1972, c. 87, s. 31.

Offences and penalties

32. Any person who:

(*a*) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

(*b*) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

(*c*) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

is guilty of an offence and liable on summary conviction to a fine not exceeding $500 or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1972, c. 87, s. 32.

Attorney General may intervene

33. The Attorney General or counsel appointed by him for the purpose may at any time, without leave of the court or judge, intervene in any action or proceedings taken in any court under section 27 or 28 and no order for costs for or against the Attorney General shall be made as a result of the intervention. 1972, c. 87, s. 33.

Act to provide additional remedies

34. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure. 1972, c. 87, s. 34.